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U.S. DEPARTMENT OF JUSTICE

United States Parole Commission

RULES AND PROCEDURES MANUAL

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INTRODUCTION

This manual contains the Commission's rules (28 C.F.R. §§2.1-2.65) as well as the notes, procedures, and appendices that clarify and supplement these rules. If there appears to be a direct conflict between any of the procedures and a rule, the rule shall control. The notes, procedures, and appendices in this manual are intended only for the guidance of Parole Commission personnel and those agencies which must coordinate their work with the Commission. The notes, procedures, and appendicies do not confer legal rights and are not intended for reliance by private persons.

In some instances, it is necessary to implement procedural changes immediately. This will be accomplished by issuance of a "Rule and Procedure Memo" signed by the Chairman (to be subsequently ratified by the Commission). These memos are numbered in sequence according to the year issued.

§2.1 DEFINITIONS.

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two other National Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board. The Vice Chairman of the Commission shall be the presiding officer of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be the presiding officer of the National Commissioners.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. §4164 or §4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. §4163 and §4164.

(h) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a prerelease record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

Notes and Procedures

2.1-01. *Calendar Days.* The term "days" refers to "calendar" days.

§2.2 ELIGIBILITY FOR PAROLE: ADULT SENTENCES.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. §4205(a) [or pursuant to former 18 U.S.C. §4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. §4205(b)(1) [or pursuant to former 18 U.S.C.

§4208(a)(1)] may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. §4205(b)(2) [or pursuant to former 18 U.S.C. §4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. §924(a) or 26 U.S.C. §5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. §4205(b)(2). However, if the prisoner's offense was committed on or after October 12, 1984, and the Court imposes a term or terms under 26 U.S.C. 5871, the prisoner is eligible for parole only after service of one-third of such term or terms, pursuant to 18 U.S.C. §4205(a).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission.

Notes and Procedures

█ 2.2-01. *Territorial Prisoners.*
(a) *U.S. Territories.* Prisoners sentenced for territorial offenses in the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust territories of the Pacific Islands come under the jurisdiction of territorial parole authorities, not the U.S. Parole Commission, even if they are confined within the United States. Prisoners sentenced for territorial offenses in all other territories come under the jurisdiction of the U.S. Parole Commission.

(b) *U.S. Code violations within Territories.* Prisoners sentenced for U.S. code violations in all territories come under the jurisdiction of the U.S. Parole Commission.

(c) *Panama Canal Zone.* Prisoners sentenced under former territorial Canal Zone law to sentences of incarceration of over one year are sent to Federal Prisons in the United States and come under the parole jurisdiction of the U.S. Parole Commission unless they have chosen to be transferred to the custody of the Republic of Panama.

█ 2.2-02. *District of Columbia Prisoners.* Under 24 D.C. Code 206 the U.S. Parole Commission has jurisdiction over all eligible (those serving sentences of 181 days or more) District of Columbia prisoners (including parole violators) confined in federal institutions. The date of parole eligibility for a D.C. Code prisoner is governed by D.C. law and not federal statute. For an adult D.C. Code prisoner, if parole is revoked all 'street time' must be forfeited. In all other respects, U.S. Parole Commission regulations control.

█ 2.2-03. *Military Prisoners (10 U.S.C. 858; Uniform Code of Mil. Just., Art. 58).*
(a) Prisoners sentenced by military courts-martial and then transferred to a federal institution come under the exclusive jurisdiction of the United States Parole Commission for parole purposes. Military authorities retain jurisdiction for clemency purposes and may reduce the maximum term to be served. Clemency may be granted either while confined or while in the community on parole or mandatory release.

(b) A prisoner paroled and revoked by military authorities, who is subsequently transferred to a federal institution, is eligible for a hearing at the time of the next visit by the United States Parole Commission. The Commission accepts the military parole revocation as final, but conducts a hearing to determine reparole suitability. Such prisoner must file a parole application prior to such hearing.

2.2-04. *Non-Parolable Sentences.* Offenders sentenced under any of the following sections are not eligible for parole:

(a) 18 U.S.C. §924(c) (use of a firearm during a federal crime of violence (firearm use occurred on or after October 12, 1984) or drug trafficking crime (firearm use occurred on or after November 15, 1986) and §924(e) (possession of a firearm by an offender with at least three prior convictions for a violent offense or serious drug offense, if the possession occurred on or after October 27, 1986);

(b) 18 U.S.C. §929 (use of restricted ammunition/armor-piercing bullets in a crime of violence (use occurred on or after October 12, 1984), or in a drug trafficking offense (use occurred on or after November 15, 1986);

(c) 18 U.S.C. Appendix §1202(a) (if the offense was committed on or after October 12, 1984 and the offender has three prior convictions for certain offenses; section was repealed effective November 15, 1986 and these offenses committed on or after that date will now be charged under §924(e));

(d) 21 U.S.C. §841 (b)(1)(A), (B) and in some cases (C) (drug trafficking offenses involving Schedule I and Schedule II drugs) (only if the offense was committed on or after October 27, 1986);

(e) 21 U.S.C. §848 (continuing criminal enterprise involving drugs); and

(f) 21 U.S.C. §960(b)(1), (2) and in some cases (3) (drug importation and exportation offenses involving Schedule I and Schedule II drugs) (only if the offense was committed on or after October 27, 1986).

Note: An offender may have an aggregate sentence composed of both parolable and non-parolable component sentences and may, therefore, become eligible for parole on part of the aggregate sentence. If the non-parolable component sentence is served first (as usually will be the case), the parole eligibility date on the aggregate sentence will be after completion of the non-parolable component sentence (less good time) plus the minimum, if any, of the parolable sentence. As this date will depend on the amount of good time earned and, thus, may not be known precisely at the time of the initial hearing, the following wording may be used on any parole order on the aggregate sentence: "presumptive parole upon completion of _____ months, provided you have reached your parole eligibility date on the aggregate sentence.

2.2-05. *Treaty Cases.* Cases returned to the United States under prisoner transfer treaties are treated as if sentenced under 18 U.S.C. §4205(b)(2) for all parole purposes. Exception: In Mexican and Canadian treaty cases, the 'street time' forfeiture provisions upon parole revocation are the same as those applicable to Youth Corrections Act cases.

§2.3 SAME; NARCOTIC ADDICT REHABILITATION ACT.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for "study" prior to

final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required. (18 U.S.C. §4254).

Notes and Procedures

■ 2.3-01. *Certificate of Release Readiness.* This certificate is signed by the local Drug Abuse Program Manager through authority delegated by the Medical Director of the Bureau of Prisons and the Surgeon General.

■ §2.4 SAME; YOUTH OFFENDERS AND JUVENILE DELINQUENTS.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission. (18 U.S.C. §5017(a) and §5041).

■ §2.5 SENTENCE AGGREGATION.

When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 U.S.C. §4161 and §4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

■ §2.6 WITHHELD AND FORFEITED GOOD TIME.

While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, §4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

Notes and Procedures

■ 2.6-01. *Disciplinary Infractions.* An effective or presumptive parole date may be granted by the Commission only after a thorough review of circumstances underlying any disciplinary infraction(s) and where the Commission is satisfied that the date it sets will require a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct. Any presumptive or effective date is contingent upon the absence of further misconduct. A parole date shall not be made contingent upon restoration of good time by the Bureau of Prisons.

■ §2.7 COMMITTED FINES AND RESTITUTION ORDERS.

(a) Committed Fines. In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law under the regulations of the Bureau of Prisons. Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

(b) Restitution Orders. Where a prisoner applying for parole is under an order of restitution, and it appears that the prisoner has the ability to pay and has willfully failed to do so, the Commission shall require that approval of a parole

release plan be contingent upon the prisoner first satisfying such restitution order. The prisoner shall be notified that failure to satisfy this condition shall result in retardation of parole under the provisions of §2.28(e).

Notes and Procedures

2.7-01. *Release from Imprisonment.* The Bureau of Prisons handles disposition of all committed fines. The Commission shall render a decision irrespective of the status of the committed fine. However, if parole is granted, the order must read: "Parole effective [ ], provided that a committed fine is paid or otherwise disposed of according to law before release." Provide at least sixty days lead time to allow the Bureau to process such cases.

§2.8 MENTAL COMPETENCY PROCEEDINGS.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by a hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Federal Prison System facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated officials as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

Notes and Procedures

2.8-01. *Appearances Required.* All parole applicants and alleged parole violators, even where there is a question of mental or emotional disturbance (including those certified as incompetent), will appear before the Commission when normally scheduled. An exception occurs in those cases where the prisoner is so disturbed that to force an appearance would be disruptive. In those instances, a statement by a member of the institutional staff should be prepared for the file with the concurrence of a medical officer in lieu of a personal appearance.

■ §2.9 STUDY PRIOR TO SENTENCING.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. §4205(c), the report to the sentencing court is prepared and submitted directly by the United States Federal Prison System.

■ §2.10 DATE SERVICE OF SENTENCE COMMENCES.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: Provided, however, that any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on court-ordered bail; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of subsection (b) of this section.

■ §2.11 APPLICATION FOR PAROLE; NOTICE OF HEARING.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to §2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Federal Prison System for completion by the prisoner.

(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to §2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by §2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

■ 2.11-01. *Waiver of a Hearing or Parole Grant.*
(a)(1) A prisoner who wishes to waive any hearing or parole grant [except as noted in 2.11-01(b)] shall sign a parole waiver on the appropriate form. The original of this form (witnessed by an institutional staff member) shall be forwarded to the Regional Parole Office and placed in the prisoner's regional file and one copy shall be retained in the prisoner's institutional file. In the case of a waiver of a parole grant, the previous order shall be marked "*cancelled by waiver dated* [   ]." A new application is required if the prisoner later wishes to reapply for parole.

(2) In the case of a prisoner who waives a presumptive, mandatory or effective parole date and later reapplies for parole, a record review shall be conducted. Absent disciplinary infractions or new adverse information, the previous parole date may be reinstated, or if such date has passed, a parole effective date established without a hearing. Otherwise, a new hearing shall be scheduled.

(b) Exception: Hearings for juvenile delinquents, revocation hearings, and hearings pursuant to §2.28(b-f) cannot be waived. Rescission hearings, or statutory interim hearings where there has been an IDC disciplinary infraction since the last hearing, may be canceled only by waiver of the actual parole grant.

■ 2.11-02. *Refusal to Make Application/Recalcitrant Prisoners.*
(a) Where a prisoner declines either to apply for or waive parole consideration, institution staff should prepare a signed, dated memorandum to the prisoner's file noting that the prisoner has been advised of (1) his right to apply for parole consideration and (2) that failure to apply for parole is deemed as a waiver of parole consideration; and that the prisoner has declined to file a parole application or waiver. No action is taken by the Commission unless the prisoner has declined to file a parole application or waiver. No action is taken by the Commission unless the prisoner subsequently applies for parole.

(b) When a prisoner refuses to enter the hearing room, physical force should not be used to ensure his appearance. Instead, an official of the institution should make a written statement that the prisoner was properly advised of his right to a hearing, but refused to make such appearance. The hearing panel, in such cases, should consider that he has waived parole and enter a memo for the file to that effect.

■ 2.11-03. *Prisoner Background Statement.* In addition to formal application for parole, all prisoners who desire to be considered for parole are provided a background statement (Form I-32). The prisoner may use this statement to bring any material he desires to the attention of the Parole Commission.

■ 2.11-04. *Prisoners Out of the Institution.* A prisoner entitled to a hearing who is unavoidably out of the institution during an examiner panel's visit is normally passed over until the next docket. Such instances occur when a prisoner has been delivered to a court on the basis of a writ, when he has been placed in a civilian hospital or other similar facility, or when he has escaped. A brief memo to the file is prepared. However, when a prisoner has been removed from an institution [on a court writ of ad testificandum] for a reason such as testimony or prosecution in court or [for] hospitalization, and is past his parole eligibility date, and return by the next docket is not anticipated, the panel is to notify the Regional Office by memo. The Regional Office should, [absent reasons to the contrary,] whenever feasible, schedule a hearing at the place of confinement as if the prisoner were a federal boarder (2.16-01). For procedures in revocation cases where the alleged violator is unavailable, see 2.49-01(c) and 2.49-02(a).

■ §2.12 INITIAL HEARINGS: SETTING PRESUMPTIVE RELEASE DATES.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted at least 90 days prior to the completion of such minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to §2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of §2.14 and §2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. §4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to §2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by §2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

Notes and Procedures

■ 2.12-01. *Reports from Probation Officers.* Before a hearing may be conducted there must be available to the examiner panel a copy of a pre-sentence report or a post-sentence report. A scheduled hearing shall be continued if neither is available to the panel. In such case the panel shall notify the Regional Office to take whatever action necessary to secure the required report.

■ 2.12-02. *Permissible Actions.* Following initial hearing, the panel may recommend: an 'effective date' of parole [within six months from the date of the hearing]; a presumptive parole date [more than six months from the date of initial hearing but no later than fifteen years]; a fifteen year reconsideration hearing [at fifteen years from the month of the present hearing]; or continue to expiration [if the statutory release date is within fifteen years of the month of the hearing]. Prisoners will be scheduled, in addition, for statutory interim hearings automatically as required by law.

■ 2.12-03. *Parole on the Record.*

(a) Where it appears upon pre-hearing review (1) that parole upon completion of the minimum sentence (at parole eligibility date) or within 180 days of the pre-hearing review decision is clearly warranted, (2) that such release date occurs within or above the applicable guideline range, and (3) that an in-person hearing does not appear necessary for further examination of the case, a hearing panel may recommend that parole based upon the record be granted. When such recommendation is made by a hearing panel and the Regional Commissioner concurs, a standard Notice of Action will be issued with the addition of the wording in paragraph (b) or (c). If the Regional Commissioner does not concur, the panel recommendation is voided and the case will be scheduled for hearing under standard procedure.

(b) Where parole is granted upon completion of the minimum sentence, add to each Notice of Action following the "reasons" section: *"Note: The Commission has decided to grant you a parole date upon completion of your minimum sentence on the basis of a review of your record. As the Commission is precluded by law from releasing you at an earlier time, this release date is NOT APPEALABLE."*

(c) Where parole is granted within 180 days of the date of the pre-hearing review and the parole eligibility date will have already passed, add to each Notice of Action following the "reasons" section: *"Note: Under 18 U.S.C. 4208(a), the Commission has decided to grant you an effective parole date on the basis of a review of your record without a personal hearing."*

■ §2.13 INITIAL HEARING; PROCEDURE.

(a) An initial hearing shall be conducted by a panel of two hearing examiners unless the Regional Commissioner for extraordinary circumstances authorizes the hearing to be conducted by a single examiner. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in §2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statements.

(c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and of the reasons therefore. Written notice of the official decision, or the decision to refer under §2.17 or §2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter) the prisoner shall also receive in writing the reasons therefore.

(d) In accordance with 18 U.S.C. §4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in §2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to §2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

Notes and Procedures

■ 2.13-01. *Panel Functioning.* Examiner panel(s) conduct hearings at the institution of confinement according to a printed schedule. The appropriate Case Manager is also in attendance. A recording device is used to record the interview.

The hearing summary is dictated following each hearing. Except where the case is "continued to the Regional Office" for some unusual reason, the summary includes a recommendation relative to parole, revocation or continuance. At the conclusion of the hearing, the prisoner (and his representative) is informed of the panel recommendation (and the fact that his recommendation is subject to review at the Regional Office). If there is a split recommendation, the prisoner is told the alternative recommendations (examiners need not be identified by recommendation). In original jurisdiction cases, the prisoner is told the alternative panel recommendation.

2.13-02. *Representation.*

(a) Representation is normally limited to one person. However, it is in the presiding hearing examiner's discretion, where appropriate, to permit additional representatives to appear. Any continuance due to the absence of a prisoner's representative shall be at the discretion of the presiding hearing examiner and shall be granted only for good cause. A brief memo to the file is prepared.

(b) At local or institutional revocation hearings, a person other than an attorney (Member of the Bar) shall be limited to the role of a witness or representative except that where permissible by state law, a law student may function in the role of an attorney provided (i) the inmate knowingly and intelligently consents; and (ii) the law student is under the direct supervision of a member of the bar (who is physically present). However, representation by both law student and supervisor shall not be permitted. An attorney or other representative at any other hearing shall be limited only to the role of representative as previously defined.

(c) The prisoner and his representative will normally be entitled to be present during the entire hearing except during deliberations of the decision-makers, or where institutional security would be jeopardized and/or personal safety of adverse witnesses might be involved. If the prisoner is removed at the request of the panel, the reasons for such exclusion from the hearing must be well documented into the record. A prisoner's representative will also be allowed to be present when the panel informs the prisoner of its recommendation and reasons regardless of the type of hearing.

(d) In cases where the witness will be unavailable, or wishes to give testimony containing matters exempt under the statute or where the witnesses' testimony would be adverse in nature and the witness does not wish, for proper grounds, to give the testimony in the presence of the prisoner, the prisoner may be removed from the hearing, or in the alternative the witness may offer a written statement to be used by the panel in their deliberations. If at all possible, this written statement should be submitted by the witness well in advance of the hearing.

(e) If the written statement so offered contains exempt material, and the witness represents a government agency, it is the duty of that witness to determine what material is exempt and to summarize that material for the benefit of the prisoner. If the witness is a private person, the Regional Office will perform that task in advance of the hearing. Where the material is submitted directly to the panel of examiners, the summary will be given to the prisoner along with his Notice of Action.

(f) Pursuant to 28 C.F.R. §2.55(a)(3), upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of an initial hearing, interim hearing, or a fifteen-year reconsideration hearing, pursuant and subject to the regulations of the U.S. Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A). Bureau of

Prisons personnel are responsible for implementing the above procedure. *Note:* This procedure does not apply to rescission or revocation hearings.

■ 2.13-03. *Computation of guidelines.* The guidelines evaluation worksheet will be completed at all initial hearings.

■ 2.13-04. *Provisions of Reasons.* Reasons following the appropriate guideline format will be typed on all Notices of Action denying a parole date or granting a presumptive or effective parole date. However, repetition of the reasons already given is not required (a) when an effective date is granted as a result of a pre-release review of a previous presumptive date order, and the date of release has not been changed; and (b) on any other Notice of Action where no change in the previous decision is made.

■ 2.13-05. *Summary Formats.* Use the hearing formats as indicated in Appendix 1. In preparing correspondence, hearing summaries, reports and other documentation, use professional language which describes the subject and explains the Commission's position clearly, simply, and accurately. It should be kept in mind that much of what is written is disclosable to the prisoner or releasee and may come before the Courts, the Congress, or the public. Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive discredits the Commission and the writer, and its use violates the Commission policy.

■ 2.13-06. *Standardized Wording on Orders.* Use the standardized wording in Appendix 2. It is conceivable that there may be an action not covered by this wording. In such instances wording should be developed to fit the action desired.

■ 2.13-07. *Co-defendants.* Co-defendants and their parole status including sentence and guideline data, any reasons for departure from the guidelines, and months served will be listed, when available, in initial and reconsideration summaries.

■ 2.13-08. *Conditions of Parole.* Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing panel at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate, special conditions may be added or modified at any time prior to the prisoner's release.

■ 2.13-09. *Additions to Docket.* Where, by reason of transfer, a prisoner has missed his initial hearing, subsequent hearing or revocation hearing, the prisoner may be added to the docket at the request of the Warden and with the approval of the Senior Examiner designated by the Regional Commissioner. No other interviews for cases not on the docket will be conducted without written approval from the Regional Commissioner.

■ 2.13-10. *Visitors at Hearings.*
(a) *In General.* As a general principle, Parole Commission hearings are not open to the public. However, where good cause exists, visitors may be permitted to attend provided their presence will not interfere with the orderly course of the proceedings. The presiding hearing examiner determines who will be admitted to the hearing room. If he cannot make the final decision in accordance with subsection (b), he will communicate with the authorized official.

(b) *Criteria.* The Commission has found it appropriate to allow the following classes of visitors (other individuals must be considered by the presiding examiner on a case by case basis). Persons having a direct interest in a case shall be considered under procedures dealing with representatives.

(1) U.S. Parole Commission, Bureau of Prisons, or U.S. Probation Service employees; and Federal Judges or Magistrates.

(2) Federal or State Legislators; State Judges, State Parole or Probation personnel.

(3) Newspaper or Magazine Correspondents (permission must be granted by the Regional Commissioner).

(4) Researchers (prior permission must be granted by the Chairman).

(5) Students in fields related to criminal justice.

(c) *Restrictions.*

(1) Visitors are not to participate in hearing proceedings. Examiners will not discuss cases with visitors in any instance until after a recommendation has been made and the summary dictated.

(2) Visitors will not be permitted to use recording devices.

(3) Examiners may request visitors to leave the hearing room when it is affecting the progress of the hearing. Examiners should also remove visitors from the room prior to hearing cases which, in their judgment, involve matters usually sensitive as far as the prisoner is concerned.

(4) Visitors should not be permitted to enter or leave the hearing room during the proceedings (for sake of the dignity or orderly proceedings).

(5) Except for visitors listed under subsection (b)(1), permission must be granted in writing by the prisoner (at a revocation hearing the attorney must also be in agreement) for visitors to be present at hearings. It must be explicitly and forcefully made clear to the prisoner that he has a right not to have visitors present, and that such action will not affect the Commission action on his case in any way. Panel members should be careful that a prisoner does not feel coerced to allow such visitors to be present.

(6) Visitors should not be present at hearings on original jurisdiction cases, or cases which in the judgment of the examiner will be referred to the Regional Commissioner as original jurisdiction cases.

(7) No visitor shall remain in the hearing room during deliberations or dictation unless specifically authorized by the examiner panel.

2.13-11. *Interested Parties Opposing Parole.*

(a) A victim/witness (verified by the Bureau of Prisons Victim/Witness Coordinator) or a criminal justice official [e.g., U.S. Attorney, FBI or DEA Agent] may attend a specific parole hearing to oppose parole without special permission. Any other person wishing to attend a hearing to oppose parole must obtain permission from the Regional Commissioner in advance of the hearing. Requests for such permission must be in writing. Interested persons opposing parole are encouraged to submit written comments in lieu of a personal appearance. Where a personal appearance is made, any persons opposing parole will be requested to select one person as a spokesperson. However, it is in the presiding examiner's discretion, where appropriate, to permit additional persons to be present. A continuance due to the absence of an interested party opposing parole shall be in the discretion of the presiding examiner and shall be granted only for good cause. A brief memo to the file is to be prepared.

(b) An interested party opposing parole shall be provided an opportunity to make a statement at the appropriate time determined by the presiding hearing examiner. The prisoner may be excluded at the request of such person for good cause, or when it appears to the hearing panel that institutional security or the personal safety of such person might be involved. The reason for any such exclusion must be documented in the record and any testimony out of the prisoner's presence must be promptly summarized for the prisoner with an opportunity for response.

(c) Upon request, any victim/witness (verified through the Bureau of Prisons Victim/Witness Coordinator) or criminal justice system official may be notified of the Commission's official decision in accordance with 2.24-13. A separate memo to the Regional Office is to be prepared by the panel pointing out the above request for notification. The hearing panel may inform an interested party opposing parole of its recommended decision following the hearing, but the applicable reasons (e.g., guideline indicants) are to be provided only under 2.24-13.

■ 2.13-12. *Continuances.* If a hearing is continued, a tape of the discussion with the prisoner leading to the continuance is made. The hearing panel, at the request of the prisoner, may grant a continuance to the next docket for good cause (for revocation hearings, see 2.50-05). A second continuance may be granted by the panel only for compelling reasons. A form, available at the institution, shall be executed requesting the continuance. Note: A request for a third or additional continuance must be in writing to the Regional Commissioner and must be received at least ten days prior to the scheduled hearing docket. When a continuance is granted, a memo of the reasons for the continuance is prepared and a Commission order is completed.

■ §2.14 SUBSEQUENT PROCEEDINGS.

(a) Interim proceedings. The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or fifteen-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of §2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released). However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a fifteen-year reconsideration hearing. However, it shall be the policy of the Commission that, once set, a presumptive release date or the date of a fifteen-year reconsideration hearing shall be advanced only (1) for superior program achievement under the provisions of §2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of §2.34(c-f). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this subsection);

(iv) If a presumptive date falls within six months after the date of an interim hearing, the Commission may treat the interim hearing as a prerelease review in lieu of the record review required by paragraph (b) of this section.

(b) Pre-Release reviews. The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.
(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by §2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by §2.34;

(iv) Advance the parole date for superior program achievement under the provisions of §2.60.

(3) A prerelease review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(4) Where: (i) there has been no finding of misconduct by an Institutional Disciplinary Committee nor any allegation of criminal conduct since the last hearing; and (ii) no other modification of the release date appears warranted, the Regional Administrator may act for the Regional Commissioner under paragraph (b)(2) of this section to approve conversion of the presumptive parole date to an effective date of parole.

(c) Fifteen-year reconsideration hearings. A fifteen-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at §2.13.

(1) A fifteen-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a fifteen-year reconsideration hearing, the Commission may take any one of the actions authorized by §2.12(b).

Notes and Procedures

█ 2.14-01. *Statutory Interim Hearing.*
(a) Statutory interim hearings are scheduled each 18th or 24th month (or the preceding month when the panel does not visit the institution during the specified month) after the month of any previous hearing, as required by law. An exception occurs when the minimum term date will not have arrived by the time of a statutory interim date. In such cases the first interim hearing will be deferred until the docket immediately preceding completion of the minimum term.

(b) Where a statutory interim hearing is scheduled for a time subsequent to a presumptive date record review, the statutory interim hearing shall be cancelled if the record review results in an effective parole date. [For example, a prisoner is scheduled for a presumptive date after 21 months (with a statutory interim hearing at 18 months). During the 17th month, a presumptive date record review is conducted, and the effective parole date is approved. The statutory interim hearing is not to be conducted.] If the prisoner has already been docketed for a statutory interim hearing, the institution shall delete his name from the docket upon receipt of the notice of the approved effective date. [See 18 U.S.C. §4208(a)].

(c) Following a Statutory Interim Hearing, the panel may recommend:

(1) No change in the presumptive parole date (if the presumptive date is within six months, the panel may recommend that it be changed to an "effective" date);

(2) Advancement of a presumptive parole date (or change from a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing" to a presumptive or "effective" date) but only for documented exceptional circumstances, or superior program achievement pursuant to 28 C.F.R. §2.60;

(3) Retardation of a presumptive parole date to a "Continue to Expiration" or "Fifteen-Year Reconsideration Hearing" on the basis of disciplinary infractions [in cases with disciplinary infractions the interim hearing will be conducted as a rescission hearing].

2.14-02. *Pre-Release Record Review.* Following a Pre-release Record Review (a record review which may be conducted by an examiner or analyst), the Regional Commissioner may:

(1) Approve the release date [order an "effective" date];

(2) Approve an effective parole, but advance or retard the release date for release programming; or advance the release date for superior program achievement pursuant to 28 C.F.R. §2.60;

(3) Approve an effective parole, but retard the release date for not more than 90 days without a hearing on account of disciplinary infractions; or

(4) Schedule a rescission hearing.

§2.15 PETITION FOR CONSIDERATION OF PAROLE PRIOR TO DATE SET AT HEARING.

When a prisoner has served the minimum term of imprisonment required by law, the Federal Prison System may petition the responsible Regional Commissioner for reopening the case under §2.28(a) and consideration of parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§2.16 PAROLE OF PRISONER IN STATE, LOCAL, OR TERRITORIAL INSTITUTION.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommital for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Federal Prison System to Federal Institutions for hearings by examiner panels of the Commission.

Notes and Procedures

■ 2.16-01. *Federal Boarders.* Federal Boarders in a State facility are entitled to an initial or subsequent hearing by an examiner panel at the State facility in which they are confined unless they waive this right or are transported to a federal facility. Normally, prisoners are heard at state or local facilities, but there may arise situations in which transfer to a federal facility is appropriate. Hearing procedures shall be the same as if such prisoner were confined at a federal institution. Federal Boarders should receive "timely" notice so that a representative may be obtained. A copy of the appeal form is to be transmitted with the Notice of Action. Procedural matters, including the furnishing of forms, are the responsibility of the Bureau of Prisons. By special arrangement, however, the Commission's Regional Office might agree to assume some of these responsibilities.

■ 2.16-02. *Court Designated Parole.* Where the maximum sentence is at least six months but not more than one year, the Court may designate a parole date [18 U.S.C. 4205(f)]. Upon release, the parolee is subject to the conditions of parole and revocation for violation of such conditions by the Commission. When the court has designated parole in such cases and the prisoner is in a non-federal institution, the Regional Office must issue the "Court designated Parole Certificate."

■ 2.16-03. *Federal Prisoners Serving Concurrent State and Federal Sentences in Non-Federal Institutions.*
(a) A prisoner who is serving concurrent state and federal sentences in a state institution shall be considered for parole by an examiner panel on the record only. This procedure is to be used for initial, interim, and rescission considerations. The timing of initial consideration is determined by the standards of 28 C.F.R. §2.12.

(b) Upon notification that the prisoner has commenced service of the concurrent federal term, the Regional Office should forward a request for a progress report from the state institution in which the prisoner is incarcerated along with the parole application packet. For those prisoners with a minimum term of parole ineligibility of ten years or more, this packet should be sent to the institution at least 120 days prior to the month in which the prisoner's eligibility date falls. The Regional Office will ensure that both a sentence computation record and a pre or post sentence report are available or obtained prior to parole consideration. The authorization to disclose this report or a summary thereof must be obtained from institutional authorities for the Commission to consider this information. Each progress report must be stampdated when received in the Regional Office. Disclosure of regional file material and the state progress report should be afforded to a concurrent state and federal prisoner pursuant to 28 C.F.R. §2.55.

(c) The prisoner will not be informed of the examiner panel's recommendation until it has been finalized. Only the final Commission action will be forwarded via the standard Notice of Action. A copy of the appeal form is forwarded with the Notice of Action.

(d) Original jurisdiction cases: If a case is designated as original jurisdiction by the Regional Commissioner, notice of the referral and designation will be sent to the prisoner, along with the basis for the designation. Original jurisdiction procedures are applicable to such prisoners as in any other case.

2.16-04. *Former State Prisoners*. Federal prisoners serving concurrent state and federal terms in a state or local institution may be transferred to a federal institution to complete their federal sentence. If they have not previously been considered for parole, they are heard in the usual manner. If they have been considered by the Commission while in the "state" institution on the record without a personal hearing, a special hearing shall be conducted as soon as feasible upon their arrival at a federal institution. The purpose of this hearing shall be solely to determine whether there is any new information sufficiently significant to affect the previous decision rendered.

§2.17 ORIGINAL JURISDICTION CASES.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a quorum of Commissioners as described below, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of four votes with the appropriate Regional Commissioner and each National Commissioner having one vote. Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (i) involved an unusual degree of sophistication or planning or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) Long-term sentences. Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c)(1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case

pursuant to §2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to §2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

Notes and Procedures

▮ 2.17-01. *Referral by Panel.* A hearing panel shall refer any case falling within the criteria for original jurisdiction cases to the Regional Commissioner. The applicant should be told that his case is being referred for possible original jurisdiction consideration and the reasons therefor. The panel should also render an alternative recommendation (in the event the case is not designated an original jurisdiction case). Advising the prisoner of the possible original jurisdiction designation and the reasons therefore is normal practice but is not a due process requirement.

▮ 2.17-02. *Regional Review.*
(a) The Commissioner may designate the case as original jurisdiction and submit the case with his recommendation to the National Commissioners. In such case, a Notice of Action shall be sent to the prisoner including the basis for his original jurisdiction (e.g., National or Unusual Attention; Unusual Sophistication or Planning). If an original jurisdiction designation is based upon the criteria of 28 C.F.R. §2.17(b)(2), then the Intelligence Unit, Department of Justice, Washington, D.C., should be notified of the pending parole consideration via teletype message, using the form provided in Appendix 4, if this has not already been done at pre-hearing review.

(b) Designation of a case meeting the criteria under §2.17 as original jurisdiction by a Regional Commissioner is presumptive not mandatory. A Regional Commissioner may decline to designate the case as original jurisdiction (with a memo to the file) and (1) let the panel recommendation stand, or (2) take other action under 28 C.F.R. §2.24.

(c) Where a report from the Justice Department or other government law-enforcement agency is considered essential and such report has not been received, the Regional Commissioner may reschedule the case for the next docket for consideration of additional information. In such case, follow-up will be made with the appropriate agency to insure an expedited report.

▮ 2.17-03. *Referral to National Commissioners.* The Regional Commissioner referring a case for original jurisdiction shall use two orders (see Appendix 2). The reasons for designation specified in 28 C.F.R. §2.17 shall be particularized to the individual case and an analysis of the case and the reasons for decision shall be set forth (see Appendix 4).

▮ 2.17-04. *Processing by National Commissioners.* Upon receipt of an original jurisdiction case, the National Commissioners, where feasible, shall process the case within 21 days. Cases not requiring a meeting of the National Commissioners shall be voted on sequentially. Cases shall be docketed and Notice of Action and other notifications shall be processed by the Central Office.

▮ 2.17-05. *Declassification.* Where a case has been previously designated as original jurisdiction and the Regional Commissioner believes it no longer warrants such classification, he may refer the case to the National Commissioners for declassification. The Regional Commissioner shall also vote on the substantive case decision. The National Commissioners shall first vote on declassification. If declassified, the case shall be treated as a non-original jurisdiction case and returned to the region for processing, unless the Regional Commissioner's proposed decision requires action under 2.24(a) [i.e., it differs from the hearing panel recommendation and 2.24(b)(1) or (2) are inapplicable]. If not declassified, the case shall be processed under original jurisdiction procedures.

■ 2.17-06. *Rescission.* See 2.34-05.

■ 2.17-07. *Revocation.* Where a case previously has been designated original jurisdiction or is being designated at this time, all orders (including any forfeiture of street time) will be forwarded with the Regional Commissioner's vote, reasons and rationale to the National Commissioners. Thereafter, the orders will be processed in the same manner as any other original jurisdiction decision.

■ §2.18 GRANTING OF PAROLE.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

■ §2.19 INFORMATION CONSIDERED.

(a) In making a parole or reparole determination the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney;

(5) reports of physical, mental, or psychiatric examination of the offender; and

(6) a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim.

(b)(1) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(2) To permit adequate review of information concerning the prisoner, materials submitted to the Commission should be received by the Commission no later than the first day of the month preceding the month of the scheduled hearing docket.

(3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing (or preliminary interview) and the hearing panel (or person conducting the hearing or preliminary interview) concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing (or preliminary interview). All of the material submitted will become part of the record to be considered by the Commission in its review of the proceedings.

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless: (1) Reliable evidence is presented that was not introduced at trial (e.g., a subsequent admission or other clear indication of guilt); (2) the prisoner was found not guilty by reason of his mental condition; or (3) the acquittal is contradicted by, or inconsistent with, a conviction by the same or another trial jury.

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

Notes and Procedures

■ 2.19-01. *Prohibition Against Use of Illegal Wiretap Evidence*. Under 18 U.S.C. §2515 courts and other government authorities, including the Commission, are prohibited from using any illegal wiretap evidence for any purpose. Therefore, no information acquired from an illegal wiretap shall be used by the Commission for determining offense severity, salient factor score, or for any other purpose in parole release, revocation, reparole, rescission or any other decision.

■ 2.19-02. *Not Guilty Verdicts After Trial.*
(a) If a prisoner is convicted after trial of a lesser included offense and acquitted on a more serious offense (e.g., conviction for carnal knowledge after trial for rape; conviction for voluntary manslaughter after trial for murder), only the conviction offense is to be considered unless the case falls under one of the exceptions listed in 28 C.F.R. 2.19(c).

(b) If a prisoner is convicted by trial of an offense, such as conspiracy, attempt, aiding or abetting, or accessory after the fact, where the severity rating is, by rule, determined by reference to the underlying offense (e.g., 28 C.F.R. 2.20 specifies that conspiracy is to be rated in the same category as the underlying offense), acquittal on the underlying offense does not bar use of the conviction offense (e.g., conviction for conspiracy to murder is graded as Category Eight even if the prisoner is acquitted of the charge of murder). However, the acquittal should be carefully considered in assessing the offender's role and level of culpability in the offense.

█ 2.19-03. *Evidence Not Considered at Criminal Trial.* Under 28 C.F.R. 2.19(c), the Commission may consider evidence that was excluded or not considered at a criminal trial because of procedural violations (e.g., information concerning the seizure of drugs suppressed for failure to obtain a proper search warrant, or a confession suppressed for failure to properly give the *Miranda* warning). Particular care should be exercised in considering the reliability of such information since the reasons for its exclusion may raise significant doubts about its reliability (e.g., coercion in the case of a confession). The Commission may also consider reliable information developed after trial (e.g., a subsequent admission of guilt).

█ 2.19-04. *Reliance on Offense Descriptions in Presentence Reports.*
(a) It is not uncommon for a prisoner to present a description of his or her offense behavior which is significantly different from the prosecution version of the offense in the presentence report. Commission regulations (in conformance with the *Parole Commission and Reorganization Act of 1976)* require the Commission to consider any reasonably available information concerning the prisoner, including information submitted by the prisoner, and require the Commission (not the sentencing court) to resolve conflicting versions of the facts by the preponderance of evidence standard. To say that the description of the offense in the presentence report will be deemed to be controlling unless first modified by the court is contrary to the Commission's duty to make its own independent factual findings. To be sure, the presentence report traditionally, and appropriately, has been given a great deal of weight by the Commission in making fact findings. But determining the weight to be given to any particular source of information is a function to be performed on a case-by-case basis. 2.20-04 lists several criteria for assessing the reliability of information. The Commission may not under its present statute and regulations treat the presentence report as an unassailable source of factual information. It is to be noted that it may be futile for a prisoner to return to court seeking a modification of his presentence report. Some courts have refused to entertain post-sentencing requests for modification of the presentence report, holding that it is up to the Commission to make its own factual determinations in the parole decision making process.

(b) Therefore, information submitted to the Commission which conflicts with the presentence report, or any other government report, must be weighed by the Commission along with the report. The Commission is then to resolve the conflicting versions of the facts by the preponderance of evidence standard; that is, decide which version of the facts best accords with reason and probability. Judging the credibility of the source of the information naturally is part of the fact finding process. The prisoner, of course, may have an interest in having the facts distorted to show him to be less culpable than he really is. On the other hand, the presentence report writer, who must depend on investigative reports, may have misinterpreted the investigative reports or confused the facts of a complicated case. These possibilities must be weighed in each individual case.

(c) Where the hearing panel concludes that the description of the offense reported in the presentence report or Form 792 is to be believed, it should, when informing the prisoner of its recommendation, explain that its finding is based upon the information before it. It may then tell the prisoner that if the prisoner obtains further significant information, such as a correction from the sentencing court or probation officer, he may send it to the regional office for consideration of a reopening of the case.

2.19-05. *Information for Decision-Making.*

(a) If the presentence report is not clear as to the data needed to establish the correct guidelines, the U.S. Probation Office that prepared the report should be contacted. Where it is determined that additional information concerning the offense behavior is needed, Form USA-792 may be requested (see Sample Letter at Appendix 4(C)). Modifications to that sample letter may be made where warranted (e.g., where a report has previously been provided and additional information is required). Note also that, in drug offenses, the DEA regional office where the prosecution occurred may be a useful source of information.

(b) Establishing the correct guidelines and making objective and fair decisions are dependent upon having adequate information. Careful attention, particularly at the pre-hearing stage, will enable the securing of additional information where appropriate, and enhance the quality and fairness of our work.

§2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at §2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h) If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

(2) **Exception:** Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months on one count or more of an indictment or information followed by a probation term on the other count(s) of an indictment or information], the case shall be considered for guideline purposes under §2.21 as if parole rather than probation had been revoked.

GUIDELINES FOR DECISION-MAKING
[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS:	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
Severity of Offense Behavior	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
	Guideline Range			
Category One	<=4 months	<=8 months	8-12 months	12-16 months
	Guideline Range			
Category Two	<=6 months	<=10 months	12-16 months	16-22 months
	Guideline Range			
Category Three	<=10 months	12-16 months	18-24 months	24-32 months
	Guideline Range			
Category Four	12-18 months	20-26 months	26-34 months	34-44 months
	Guideline Range			
Category Five	24-36 months	36-48 months	48-60 months	60-72 months
	Guideline Range			
Category Six	40-52 months	52-64 months	64-78 months	78-100 months
	Guideline Range			
Category Seven	52-80 months	64-92 months	78-110 months	100-148 months
	Guideline Range			
Category Eight*	100+ months	120+ months	150+ months	180+ months

*Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category by more than 48 months, the Commission will specify the pertinent case factors upon which it relied in reaching its decision, which may include the absence of any factors mitigating the offense. This procedure is intended to ensure that the prisoner understands that individualized consideration has been given to the facts of the case, and not to suggest that a grant of parole is to be presumed for any class of Category Eight offenders.

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CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

101 Conspiracy

Grade conspiracy in the same category as the underlying offense.

102 Attempt

Grade attempt in the same category as the offense attempted.

103 Aiding and Abetting

Grade aiding and abetting in the same category as the underlying offense. [[*Notes and Procedures.* Aiding and Abetting is sometimes referred to as Accessory Before the Fact]].

104 Accessory After the Fact*

Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.

--- NOTE TO CHAPTER ONE

The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense). [[*Notes and Procedures.* In grading unconsummated conspiracy offenses, care must be taken to distinguish the specific and imminent elements of the offense (which are to be considered) from those which are speculative and remote.]]

CHAPTER TWO - OFFENSES INVOLVING THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201 Murder

Murder*, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight. [[*Notes and Procedures.* (1) Grade a forcible felony resulting in the death of a person other than a participating offender as Category Eight even if the death was

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***Terms marked by an asterisk are defined in Chapter Thirteen.**

not intentional. Example 201-1: During a robbery, an offender's weapon discharges accidentally, resulting in the death of a bank teller. (2) Grade conduct as 'attempted murder' only where it is established from the circumstances that both (a) death was the intended object; and (b) had death resulted, the offense would have been graded as Category Eight. Example 201-2: An offender places a bomb aboard an aircraft, but the bomb fails to explode. Example 201-3: During a robbery, an offender places a loaded revolver to the head of a victim and pulls the trigger, but the weapon misfires. Grade each of the above examples as 'attempted murder'. (3) An attempt to kill which, if successful, would have been classified as 'voluntary manslaughter' (Category Seven), is to be graded as 'assault with serious bodily injury the result intended'.]]

202 Voluntary Manslaughter*

Category Seven.
[[*(Notes and Procedures.* Example 202-1: An offender stabs and kills a person during a drunken quarrel in a tavern.]]

203 Involuntary Manslaughter*

Category Four.
[[*(Notes and Procedures.* This offense is frequently referred to as 'negligent homicide'. Example 203-1: While driving under the influence of alcohol, an offender loses control of a vehicle and kills a pedestrian.]]

SUBCHAPTER B - ASSAULT OFFENSES

211 Assault During Commission of Another Offense

(a) **If serious bodily injury* results or if 'serious bodily injury is the result intended'*, grade as Category Seven;** [[*(Notes and Procedures.* Example 211(a)-1: An offender, while fleeing from a robbery, fires a weapon from a distance at a pursuing police officer. The firing of the weapon at the officer in this circumstance is sufficient to find that 'serious bodily injury' was the result intended.]]

(b) **If bodily injury* results, or a weapon is fired by any offender, grade as Category Six;** [[*Notes and Procedures.* Example 211(b)-1: During a residential burglary, an offender is confronted by the victim; the offender strikes the victim with his fist and breaks the victim's jaw. Example 211(b)-2: During a bank robbery, an offender fires a weapon at the ceiling to intimidate the victims. No one is injured]].

(c) **Otherwise, grade as Category Five.** [[*Notes and Procedures.* Example 211(c)-1: An offender forcibly escapes by assaulting a correctional officer. Note: If bodily injury to the correctional officer results, or if a dangerous weapon is used to accomplish the assault, grade as Offense 212(d). Example 211(c)-2: An offender assaults a victim while attempting to commit a sexual act (other than forcible rape or sodomy).]]

212 Assault

(a) **If serious bodily injury* results or if 'serious bodily injury is the result intended'*, grade as Category Seven;** [[*Notes and Procedures.* Example 212(a)-1: During an argument, an offender strikes the victim over the head with a bottle causing injuries sufficient to place the victim on the 'critical' list. Example 212(a)-2: An offender throws a vial of acid at the face of a victim.]]

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(b) If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five; [[*Notes and Procedures.* The phrase 'a dangerous weapon is used' refers to conduct in which an offender's use of a dangerous weapon puts the victim in imminent danger of bodily injury (e.g., an offender strikes at a victim with an iron bar) or threatens the victim with death or serious bodily injury (e.g., an offender points a firearm at the victim's head). Conduct that does not fit the above parameters (e.g., an offender displays a baseball bat during a domestic dispute but does not attempt to strike the victim with the bat) is graded as Offense 212(c).]].

(c) Otherwise, grade as Category Two.

(d) Exception:

(1) If the victim was known to be a 'protected person'* or law enforcement, judicial, or correctional official, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three. [[*Notes and Procedures.* Grade an assault on a criminal justice official during an arrest under this section only if it involves force sufficient to create a likelihood of bodily injury (e.g., striking or kicking the officer).]]

(2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.

213 Firing a Weapon at a Structure Where Occupant(s) are Physically Present

Grade according to the underlying offense if one can be established, but not less than Category Five.

SUBCHAPTER C - KIDNAPING AND RELATED OFFENSES

221 Kidnaping

(a) If the purpose of the kidnaping is for ransom or 'political' terrorism, grade as Category Eight.

(b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;

(c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;

(d) Otherwise, grade as Category Seven.

(e) Exception: If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

222 Demand for Ransom

(a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;

(b) If no kidnapping has occurred, grade as 'extortion'.

SUBCHAPTER D - SEXUAL OFFENSES

231 Rape or Forcible Sodomy

(a) Category Seven.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(b) Exception: If a prior consensual sexual relationship is present between victim and offender, grade as Category Six.

232 Carnal Knowledge* or Sodomy Involving Minors
(a) Grade as Category Four, except as provided below.
(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.
(c) If the victim is less than twelve years old, grade as Category Seven.

233 Other Unlawful Sexual Conduct With Minors
(a) Category Four.
(b) Exception: If the victim is less than twelve years old grade as Category Six.

SUBCHAPTER E - OFFENSES INVOLVING AIRCRAFT

241 Aircraft Piracy
Category Eight.

242 Interference with a Flight Crew
(a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven;
(b) Otherwise, grade as Category Two.

SUBCHAPTER F - COMMUNICATION OF THREATS

251 Communicating a Threat [to kill, assault, or kidnap]
(a) Category Four; [[*Notes and Procedures.* (1) Communicating a threat includes any threat (written or oral) against the President and successors to the presidency (18 U.S.C. 871); any threat sent through the mail (18 U.S.C. 876); and any threat transmitted in interstate commerce (18 U.S.C. 875). Interstate commerce includes all telephone communications. (2) Separate threats to different victims are treated as multiple separate offenses.]]
(b) Notes:
  (1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.
  (2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, Subchapter C, or Chapter Six, Subchapter B, as applicable.

CHAPTER THREE - OFFENSES INVOLVING PROPERTY

SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 Property Destruction by Fire or Explosives
(a) If the conduct results in serious bodily injury* or if 'serious bodily injury is the result intended'*, grade as Category Seven;
(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(c) Otherwise, grade as 'property destruction other than listed above' but not less than Category Five.
[[*Notes and Procedures.* (1) The term 'structure' is not subject to precise definition, but comparability in size to a building may be used for guidance. Thus, an automobile, a small boat, or a small detached shed would not be considered a structure. On the other hand, a ship or an oil storage complex would be considered a structure under this provision. (2) Reminder: Grade multiple separate arsons under the multiple separate offense procedure.]]

302 Wrecking a Train
Category Seven.

303 Property Destruction Other Than Listed Above
(a) If the conduct results in bodily injury* or serious bodily injury*, or if 'serious bodily injury is the result intended'*, grade as if 'assault during commission of another offense';
(b) If damage of more than $1,000,000 is caused, grade as Category Six;
(c) If damage of more than $200,000 but not more than $1,000,000 is caused, grade as Category Five;
(d) If damage of at least $40,000 but not more than $200,000 is caused, grade as Category Four;
(e) If damage of at least $2,000 but less than $40,000 is caused, grade as Category Three;
(f) If damage of less than $2,000 is caused, grade as Category One.
(g) Exception: If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 Burglary or Unlawful Entry
(a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;
(b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;
(c) If the conduct involves use of explosives or safecracking, grade as Category Five; [[*Notes and Procedures.* The term 'safecracking' is intended to include conduct that is appropriately termed 'skilled' or 'sophisticated' (e.g., 'drilling' a safe on the premises or using an instrument to detect the combination of the safe).]]
(d) Otherwise, grade as 'theft' offense, but not less than Category Two.
(e) Exception: If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense.
[[*Notes and Procedures.* The term 'burglary/unlawful entry' refers to conduct involving a structure or other enclosed premises. Breaking and entering/ unlawful entry of an automobile is graded as a theft offense (Offense 331).]]

SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACKMAIL

321 Robbery
(a) Category Five.
(b) Exceptions:
  (1) If the grade of the applicable 'theft' offense exceeds the grade for robbery, grade as a 'theft' offense.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained by being tied, bound, or locked up, grade as Category Six. [[*Notes and Procedures.* The term different location' refers to removal from the premises (e.g., forcing a victim of a bank robbery to accompany an offender outside the bank).]]

(3) Pickpocketing (stealth-no force or fear), see Subchapter D.

(c) Note: Grade purse snatching (fear or force) as robbery.

322 Extortion

(a) If by threat of physical injury to person or property, or extortionate extension of credit (loansharking)*, grade as Category Five;

(b) If by use of official governmental position, grade according to Chapter Six, Subchapter C;

(c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, Subchapter F;

(d) Exceptions:

(1) If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense;

(2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 Blackmail [threat to injure reputation or accuse of crime]

Grade as a 'theft' offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses

(a) If the value of the property* is more than $1,000,000, grade as Category Six;

(b) If the value of the property* is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the value of the property* is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the value of the property* is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the value of the property* is less than $2,000, grade as Category One.

(f) Exceptions:

(1) Offenses involving stolen checks, credit cards, money orders or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property*, or embezzlement shall be graded as not less than Category Two;

(2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor; [[*Notes and Procedures.* Theft of truck incidental to theft of cargo. When the theft of the truck is clearly incidental to the theft of the cargo

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(e.g., the truck is recovered abandoned within 72 hours without significant damage) the value of the truck shall be added to the value of the cargo but such circumstances may be considered as a mitigating factor.]]

(3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category Two.

(4) Grade manufacture, sale, and fraudulent use of credit cards as follows:
   - (i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.
   - (ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.
   - (iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.

(g) Notes:

(1) In 'theft' offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. [[*Notes and Procedures*. Example 331(g)-1: Seven persons in concert commit a theft of $70,000; each receives $10,000. Grade according to the total amount ($70,000). Example 331(g)-2: An offender fraudulently sells stock worth $20,000 for $90,000. Grade according to the loss ($70,000).]]

(2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as 'fraud'.

332 Pickpocketing [stealth-no force or fear]
Grade as a 'theft' offense, but not less than Category Three.

333 Fraudulent Loan Applications
Grade as a 'fraud' offense according to the amount of the loan. [[*Notes and Procedures*. Example 333-1: An offender falsifies collateral of $250,000 to obtain a $50,000 loan. Grade according to the value of the loan ($50,000).]]

334 Preparation or Possession of Fraudulent Documents

(a) If for purposes of committing another offense, grade according to the offense intended;

(b) Otherwise, grade as Category Two.

335 Criminal Copyright Offenses

(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;

(b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;

(c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;

(d) If small scale (e.g., less than 2,000 sound recordings or less than 200 audio visual works), grade as Category Two.

SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES

341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange*

(a) If the face value of the currency or other medium of exchange is more than $1,000,000, grade as Category Six;

(b) If the face value is more than $200,000 but not more than $1,000,000, grade as Category Five;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(c) If the face value is at least $40,000 but not more than $200,000, grade as Category Four;
(d) If the face value is at least $2,000 but less than $40,000, grade as Category Three;
(e) If the face value is less than $2,000, grade as Category Two.

342 Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession)), but not less than Category Five. The term 'manufacture' refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes. [[*Notes and Procedures.* The term 'manufacturing' does not include the copying of currency not intended to pass visual inspection (e.g., reproducing a dollar bill on a copying machine for insertion in a bill/coin changing machine).]]

SUBCHAPTER F - BANKRUPTCY OFFENSES

351 Fraud in Bankruptcy or Concealing Property

Grade as a 'fraud' offense.

SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 Violation of Securities or Investment Regulations

(a) If for purposes of fraud, grade according to the underlying offense;
(b) Otherwise, grade as Category Two.

[[*Notes and Procedures.* If 'insider trading', grade as Offense 363.]]

362 Antitrust Offenses

(a) If estimated economic impact is more than one million dollars, grade as Category Four;
(b) If the estimated economic impact is more than $100,000 but not more than one million dollars, grade as Category Three;
(c) Otherwise, grade as Category Two.
(d) Note: The term 'economic impact' refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

363 Insider Trading

(a) If the estimated economic impact is more than $1,000,000, grade as Category Six;
(b) If the estimated economic impact is more than $200,000 but not more than $1,000,000, grade as Category Five;
(c) If the estimated economic impact is at least $40,000 but not more than $200,000, grade as Category Four;
(d) If the estimated economic impact is at least $2,000 but less than $40,000, grade as Category Three;
(e) If the estimated economic impact is less than $2,000, grade as Category Two.
(f) Note: The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER FOUR - OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

401 Unlawfully Entering the United States as an Alien
Category One.

402 Transportation of Unlawful Alien(s)
(a) If the transportation of unlawful alien(s) involves detention and demand for payment, grade as Category Five;
(b) Otherwise, grade as Category Three.

403 Offenses Involving Passports
(a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;
(b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 Offenses Involving Naturalization or Citizenship Papers
(a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;
(b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;
(c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE - OFFENSES INVOLVING REVENUE

SUBCHAPTER A - INTERNAL REVENUE OFFENSES

501 Tax Evasion [income tax or other taxes]
(a) If the amount of tax evaded or evasion attempted is more than $1,000,000, grade as Category Six;
(b) If the amount of tax evaded or evasion attempted is more than $200,000 but not more than $1,000,000, grade as Category Five;
(c) If the amount of tax evaded or evasion attempted is at least $40,000 but not more than $200,000, grade as Category Four;
(d) If the amount of tax evaded or evasion attempted is at least $2,000 but less than $40,000, grade as Category Three;
(e) If the amount of tax evaded or evasion attempted is less than $2,000, grade as Category One.
(f) Notes:
  (1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income. [[*Notes and Procedures.* Example 501(f)(1)-1: An offender fails to report income of $30,000, thus avoiding $10,000 in taxes; the severity rating is determined by the tax avoided (i.e., $10,000). This amount does not include interest or penalties.]]
  (2) **Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a 'fraud' offense.**

502 Operation of an Unregistered Still
Grade as a 'tax evasion' offense.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

SUBCHAPTER B - CUSTOMS OFFENSES

511 Smuggling Goods into the United States
- (a) If the conduct is for the purpose of tax evasion, grade as a 'tax evasion' offense.
- (b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;
- (c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than Category Two.

512 Smuggling Goods into Foreign Countries in Violation of Foreign Law (re: 18 U.S.C. 546)
Category Two.

SUBCHAPTER C - CONTRABAND CIGARETTES

521 Trafficking in Contraband Cigarettes (re: 18 U.S.C. 2342)
Grade as a tax evasion offense.

CHAPTER SIX - OFFENSES INVOLVING GOVERNMENTAL PROCESS

SUBCHAPTER A - IMPERSONATION OF OFFICIALS

601 Impersonation of Official
- (a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;
- (b) Otherwise, grade as Category Two.

SUBCHAPTER B - OBSTRUCTING JUSTICE

611 Perjury
- (a) If the perjured testimony concerns another offense, grade as 'accessory after the fact', but not less than Category Three;
- (b) Otherwise, grade as Category Three.
- (c) Suborning perjury, grade as perjury.

612 Unlawful False Statements Not Under Oath
Category One.

613 Tampering With Evidence or Witness, Victim, Informant, or Juror
- (a) If concerning a criminal offense, grade as 'accessory after the fact', but not less than Category Three;
- (b) Otherwise, grade as Category Three.
- (c) Exception: Intimidation by threat of physical harm, grade as not less than Category Five.

614 Misprision of a Felony*
Grade as if 'accessory after the fact' but not higher than Category Three.

615 Harboring a Fugitive
Grade as if 'accessory after the fact' to the offense for which the fugitive

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*Terms marked by an asterisk are defined in Chapter Thirteen.

is wanted, but not higher than Category Three. [[*Notes and Procedures.* In the case of a fugitive who is an escapee, the 'offense for which the fugitive is wanted' is considered to be the escape or the offense for which the fugitive was being held, whichever is graded higher.]]

616 Escape

If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three. [[*Notes and Procedures.* If the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense), grade as Category Three, unless Offense 211(c) or 212(d) is applicable.]]

617 Failure to Appear*

(a) In Felony Proceedings. If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) <=6 months if voluntary return within 6 days, or (ii) 6-12 months in any other case. Otherwise, grade as Category Three. [[*Notes and Procedures.* Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]

(b) In Misdemeanor Proceedings. Grade as Category One. [[*Notes and Procedures.* In the case of a failure to appear on a misdemeanor charge, grade the failure to appear and the underlying charge (if it can be established under Commission regulations) as multiple separate offenses. Example 617(b)-1: A parolee fails to appear on a misdemeanor charge involving theft of $400. Since the proceeding is a misdemeanor proceeding, the failure to appear is graded as Category One. If the parolee is also convicted of the theft, or if the Commission makes an independent finding of the theft, apply the multiple separate offense procedure.]]

(c) Note: For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 Contempt of Court

(a) Criminal Contempt (re: 18 U.S.C. §402). Where imposed in connection with a prisoner serving a sentence for another offense, add <=6 months to the guidelines otherwise appropriate.

(b) Exception: If a criminal sentence is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if 'accessory after the fact'.

(c) Civil Contempt. See 28 C.F.R. §2.10.

SUBCHAPTER C - OFFICIAL CORRUPTION

621 Bribery or Extortion [use of official position - no physical threat]

(a) Grade as a 'theft offense' according to value of the bribe, demand, or the favor received (whichever is greater), but not less than Category Three. [[*Notes and Procedures.* Example 621-1: A federal employee accepts a $10,000 bribe to approve a fraudulent claim of $80,000. The applicable value to be used in grading this offense is $80,000.]]

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(c) If the purpose of the conduct is the obstruction of justice, grade as if 'perjury'.

(d) Notes:
  (1) The grading in this subchapter applies to each party to a bribe.
  (2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 Other Unlawful Use of Governmental Position
Category Two.

631 Voting Fraud
Category Four.

CHAPTER SEVEN - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES INVOLVING CIVIL RIGHTS

701 Conspiracy Against Rights of Citizens (re: 18 U.S.C. 241)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

702 Deprivation of Rights Under Color of Law (re: 18 U.S.C. 242)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

703 Federally Protected Activity (re: 18 U.S.C. 245)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

704 Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination (re: 42 U.S.C. 3631)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

705 Transportation of Strikebreakers (re: 18 U.S.C. 1231)
Category Two.

SUBCHAPTER B - OFFENSES INVOLVING PRIVACY

711 Interception and Disclosure of Wire or Oral Communications (re: 18 U.S.C. 2511)
Category Two.

712 Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices (re: 18 U.S.C. 2512)
(a) Category Three.
(b) Exception: If simple possession, grade as Category Two.

713 Unauthorized Opening of Mail
Category Two.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

CHAPTER EIGHT - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

SUBCHAPTER A - EXPLOSIVES OFFENSES AND OTHER DANGEROUS ARTICLES

801 Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony
Grade according to offense intended, but not less than Category Five.

802 Mailing Explosives or Other Injurious Articles with Intent to Commit a Crime
Grade according to offense intended, but not less than Category Five.

SUBCHAPTER B - FIREARMS

811 Possession by Prohibited Person (e.g., ex-felon)
(a) If single weapon (rifle, shotgun, handgun), grade as Category Three;
(b) If multiple weapons (rifles, shotguns, handguns), grade as Category Four.
[[*Notes and Procedures.* Aliens illegally in the United States are also prohibited by federal law from possession of firearms.]]

812 Unlawful Possession or Manufacture of Sawed-off Shotgun*, Machine Gun, Silencer, or Assassination kit*
(a) If silencer or assassination kit*, grade as Category Six;
(b) If sawed-off shotgun* or machine gun, grade as Category Five.
[[*Notes and Procedures.* (1) Consider unlawful possession of a weapon combined with other offenses under the multiple separate offense procedure of Chapter Thirteen. (2) Possession/manufacture of a sawed-off rifle is graded as Category Three.]]

813 Unlawful Distribution of Weapons or Possession with Intent to Distribute
(a) If silencer(s) or assassination kit(s)*, grade as Category Six;
(b) If sawed-off shotgun(s)* or machine gun(s), grade as Category Five;
(c) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four;
(d) If single weapon (rifle, shotgun, handgun), grade as Category Three.

CHAPTER NINE - OFFENSES INVOLVING ILLICIT DRUGS

SUBCHAPTER A - HEROIN AND OPIATE* OFFENSES

901 Distribution or Possession with Intent to Distribute
(a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];
(b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];
(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
(d) If large scale (e.g., involving 50-999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];
(e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.
(f) If medium scale (e.g., involving 5-49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four.

902 Simple Possession

Category One.

[[*Notes and Procedures.* (1) The following list contains drugs classified as opiates/synthetic opiate substances (21 C.F.R. §1308):

- Acetorphine
- Acetyldihydrocodeine
- Acetylmethadol
- Allylprodine
- Alphacetylmethadol
- Alphameprodine
- Alphamethadol
- Alpha-methylfentanyl Propionanilide
- Alphaprodine
- Anileridine
- Benzethidine
- Benzylmorphine
- Betacetylmethadol
- Betameprodine
- Betamethadol
- Betaprodine
- Bezitramide
- Clonitazene
- Codeine
- Codeine Methylbromide
- Codeine-N-Oxide
- Cyprenorphine
- Desomorphine
- Dextromoramide
- Dextropropoxyphene (Bulk non-dosage form)
- Diampromide
- Diethylthiambutene
- Difenoxin
- Dihydrocodeine
- Dihydromorphine
- Dimenoxadol
- Dimepheptanol
- Dimethylthiambutene
- Dioxaphetyl butyrate
- Diphenoxylate
- Dipipanone
- Drotebanol
- Ethylmethylthiambutene
- Ethylmorphine
- 3-Methylfentanyl
- Etonitazene
- Etorphine
- Etorphine hydrochloride
- Etoxeridine
- Fentanyl
- Furethidine
- Heroin
- Hydrocodone
- Hydromorphinol
- Hydromorphone
- Hydroxypethidine
- Isomethadone
- Ketobemidone
- Levomethorpan
- Levomoramide
- Levophenacylmorphan
- Levorphanol
- Metazocine
- Methadone
- Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
- Methyldesorphine
- Methyldihydromorphine
- Metopon
- Morpheridine
- Morphine
- Morphine Methylbromide
- Morphine Methylsulfonate
- Morphine-N-Oxide
- Moramide
- Moramide-Intermediate, 2-methyl-3 morpholino-1, 1-diphenylpropane-carboxylic acid
- Myrophine
- Nicocodeine
- Nicomorphine
- Noracymethadol
- Norlevorphanol
- Normethadone
- 1-Methyl-4-phenyl-4-propionoxypiperidine (MPP)
- Normorphine
- Norpipanone
- Opium
  - Raw Opium
  - Opium Extracts
  - Opium Fluid Extracts
  - Powdered Opium
  - Granulated Opium
  - Tincture of Opium
- Oxycodone
- Oxymorphone
- Pethidine (meperidine)
- Pethidine-Intermediate-4-cyano-1-methyl-4-phenylpiperidine
- Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
- Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
- Phenadoxone
- Phenampromide
- Phenazocine
- Phenomorphan
- Phenoperidine
- Pholcodine
- Piminodine
- Piritramide
- Proheptazine
- Properidine
- Propiram
- Racemethorphan
- Racemoramide
- Racemorphan
- Sufentanil
- Thebacon
- Thebaine
- Tilidine
- Trimeperidine
- 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP)

(2) Certain drugs such as Talwin have opiate characteristics but are not counted as opiates/synthetic opiate substances in determining the offense severity.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(3) In accordance with 21 C.F.R. §1308, dextropropoxyphene will be counted as an opiate in determining the offense severity only when it is found in bulk form (not when found in capsule form prepared under the brand name of Darvon).

(4) Common Brand Names of Opiates (this list is not inclusive):

- Amidone (Methadone)
- Demerol (Pethidine)
- Dilaudid (Hydromorphone)
- Dolophine (Methadone)
- Dover's Powder (Opium)
- Dromoran (Racemorphan)
- Ethnine (Pholcodine)
- Heptalgin (Phenadoxone)
- Hycodan (Hydrocodone)
- Leritine (Anileridine)
- Levo-Dromoran (Levorphanol)
- Levorphan (Levorphanol)
- Methadose (Methadone)
- Nisentil (Alphaprodine)
- Nucodan (Oxycodone)
- Numorphan (Oxymorphone)
- Palfium (Dextromoramide)
- Paracodin (Dihydrocodeine)
- Paragoric (Opium)
- Percodan (Oxycodone)
- Pethadol (Pethidine)
- Pholdine (Pholocodine)
- Pipadone (Dipipanone)
- Prinadol (Phenazocine)

(5) Conversion of Common Opiates to Heroin Equivalent. The following chart may be used to convert common opiates to their heroin equivalent (e.g., 67.4 grams of pure methadone x .3 = 20.22 grams of pure heroin equivalent; 42.6 grams of pure hydromorphone x 2 = 85.2 grams of pure heroin equivalent):

1 gm. alpha-methylfentanyl = 100 gms. heroin
1 gm. alphaprodine = .09 gm. heroin
1 gm. anileridine = .1 gm. heroin
1 gm. codeine = .02 gm. heroin
1 gm. dextromoramide = .4 gm. heroin
1 gm. dextropropoxyphene = .01 gm heroin
1 gm. dihydrocodeine = .05 gm. heroin
1 gm. dipipanone = .12 gm. heroin
1 gm. fentanyl = 30 gms. heroin
1 gm. hydromorphone = 2 gms. heroin
1 gm. levorphanol = 1 gm. heroin
1 gm. MPPP = .5 gm. heroin
1 gm. methadone = .3 gm. heroin
1 gm. metopon = .86 gm. heroin
1 gm. morphine = .3 gm. heroin
1 gm. opium = .03 gm. heroin
1 gm. oxycodone = .2 gm. heroin
1 gm. oxymorphone = 2 gms. heroin
1 gm. PEPAP = .6 gm. heroin
1 gm. paragoric = .003 gm. heroin
1 gm. pethidine (meperidine) = .03 gm. heroin
1 gm. phenadoxone = .15 gm. heroin
1 gm. racemorphan = .6 gm. heroin
1 gm. 3-methylfentanyl = 125 gms. heroin]]
1 gm. hydrocodone = 1 gm. heroin

SUBCHAPTER B - MARIJUANA AND HASHISH OFFENSES

911 Distribution or Possession with Intent to Distribute

(a) If extremely large scale (e.g., involving 20,000 pounds or more of marijuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

(c) If very large scale (e.g., involving 2,000-19,999 pounds of marijuana/600-5,999 pounds of hashish/60-599 pounds of hash oil), grade as Category Five;

(d) If large scale (e.g., involving 200-1,999 pounds of marijuana/60-599 pounds of hashish/6-59.9 pounds of hash oil), grade as Category Four;

(e) If medium scale (e.g., involving 50-199 pounds of marijuana/15-59.9 pounds of hashish/1.5-5.9 pounds of hash oil), grade as Category Three;

(f) If small scale (e.g., involving 10-49 pounds of marijuana/3-14.9 pounds of hashish/.3-1.4 pounds of hash oil), grade as Category Two;

(g) If very small scale (e.g., involving less than 10 pounds of marijuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 Simple Possession

Category One.

[[*Notes and Procedures.* (1) 1 liter of hash(ish) oil in liquid form = 2.2 lbs. of hash oil in solid form. (2) Marijuana offenses are normally graded by bulk quantity. In determining quantity for guideline purposes, all parts of the marijuana plant as seized and weighed in bulk (e.g., from a shipment of marijuana being imported), or as negotiated for sale if no seizure is made, are counted. Occasionally, it may be necessary to estimate the scale of the offense from acreage under cultivation or from the number of plants seized. In the absence of more specific information, use the following minimum estimates. Grade 1 plant as equivalent to attempted production of 1/4 lb. of useable marijuana. Note: In the United States, marijuana is frequently grown interspersed with other crops to disguise the marijuana. In such cases, estimate 500 marijuana plants (125 lbs.) per acre. Where marijuana is the only crop under cultivation (e.g., in certain foreign locations), estimate 4,000 plants (1000 lbs.) per acre.]]

SUBCHAPTER C - COCAINE OFFENSES

921 Distribution or Possession with Intent to Distribute

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams but less than 500 grams of freebased cocaine), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount; or 10 grams-100 grams of freebased cocaine), grade as Category Five;

(g) If small scale (e.g., involving 5-99 grams of 100% purity, or equivalent amount; or 1 gram-9.9 grams of freebased cocaine), grade as Category Four;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(h) If very small scale (e.g., involving 1.0-4.9 grams of 100% purity, or equivalent amount; or less than 1 gram of freebased cocaine), grade as Category Three.

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

922 Simple Possession

Category One.

[[*Notes and Procedures.* (1) Freebased cocaine is often referred to as "crack". (2) Cocaine paste: 1 gram of cocaine paste is equivalent to 0.4 grams of pure cocaine.]]

SUBCHAPTER D - OTHER ILLICIT DRUG OFFENSES*

931 Distribution or Possession with Intent to Distribute

(a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

(c) If large scale (e.g., involving 20,000-200,000 doses), grade as Category Five;

(d) If medium scale (e.g., involving 1,000-19,999 doses), grade as Category Four;

(e) If small scale (e.g., involving 200-999 doses), grade as Category Three;

(f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 Simple Possession

Category One.

[[*Notes and Procedures.* Dosage Units. A dose of a drug is equivalent to 1 capsule, tablet, cigarette (500 mg.), gelatin square, button, or other common unit of sale. If the drug is in bulk form, a lab report from DEA may have converted the amount to doses. This information should be in the Presentence Report. If this information is not available, the following chart may be used.

HALLUCINOGENS	
Anhalamine	300 mg.
Anhalonide	300 mg.
Anhalonine	300 mg.
Bufotenine	1 mg.
Diethyltryptamine	60 mg.
Dimethyltryptamine	50 mg.
Lophophorine	300 mg.
LSD (Lysergic acid diethylamide)	.1 mg.
LSD tartrate	.05 mg.
MDA	100 mg.
MDMA [3, 4-Methylenedioxymethamphetamine (Ecstacy)]	130 mg.
Mescaline	500 mg.
PCP (solid)	5 mg.
PCP (liquid)	50 mg.
PCP ('laced'/sprayed cigarette) [e.g. one ounce of marijuana laced with PCP would equal approximately 56 dosage units of PCP]	500 mg.
PCP 1 gallon equals 720,000 dosage units	

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*Terms marked by an asterisk are defined in Chapter Thirteen.

Pellotine	300 mg.
Peyote	12 gms.
Psilocin	10 mg.
Psilocybin	10 mg.
Psilocybin Mushrooms (fresh)	50 gms.
Psilocybin Mushrooms (dried)	5 gms.
STP (DOM) Dimethoxyamphetamine	3 mg.

DEPRESSANTS

Barbituates	100 mg.
Brallobarbital	30 mg.
Eldoral	100 mg.
Eunarcon	100 mg.
Hexethel	100 mg.
Methaqualone	300 mg.
Thiobarbital	50 mg.
Thiohexethal	60 mg.

STIMULANTS

Amphetamines	10 mg.
Ethylamphetamine HCL	12 mg.
Ethylamphetamine SO4	12 mg.
Methamphetamine combinations	5 mg.
Methamphetamines	5 mg.
Preludin	25 mg.

OTHER

Talwin	50 mg.

The dosage equivalents noted above represent the amount of the pure drug that is contained in an average dose. For example, 10 milligrams (mg.) of amphetamine per dose means 10 milligrams of pure amphetamine per dose. Thus, if an offender was in possession of 50 grams of a powder which tested to be 20% pure amphetamine, the appropriate calculations would be as follows: 50 grams x 1000 = 50,000 milligrams [conversion from grams to milligrams]; 50,000 milligrams x .20 purity = 10,000 milligrams of pure amphetamine [conversion to pure amphetamine]; 10,000 milligrams / 10 milligrams per dose = 1,000 doses [division by the number of milligrams per dose]. In this example, the bulk quantity would convert to 1,000 doses of amphetamine.]]

--- **NOTES TO CHAPTER NINE**

(1) **Grade manufacture of synthetic illicit drugs as listed above, but not less than Category Five.** [[*Notes and Procedures.* Grade manufacture of synthetic illicit drugs according to the amount actually manufactured, but not less than Category Five. Note: because of the variety of chemical processes that may be used and the differential in skill of the individuals involved, estimates as to how much a laboratory could produce in the future from materials at hand may vary widely and, thus, are not used in assessing the severity rating.]]

(2) **'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gram of 100% pure is equivalent to 2 grams of 50% pure and 10 grams of 10% pure, etc.**

(3) **Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).**

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(4). If weight, but not purity is available, the following grading may be used:

Heroin	
Extremely large scale	**6 Kilograms or more**
Very large scale	**2-5.99 kilograms**
Large scale	**200 gms.-1.99 kilograms**
Medium scale	**28.35-199.99 gms.**
Small scale	**Less than 28.35 gms.**

Cocaine	
Extremely large scale	**18.75 kilograms or more**
Very large scale	**6.25-18.74 kilograms**
Large scale	**1.25-6.24 kilograms**
Medium scale	**200 gms.-1.24 kilograms**
Small scale	**20 gms.-199.99 gms.**
Very small scale	**4 gms.-19.99 gms.**
Extremely small scale	**Less than 4 gms.**

[[*Notes and Procedures.* Drug Offense Severity Calculations.
(a) Opiate/cocaine offenses are normally graded according to the quantity/purity of the drug involved. Marijuana/hashish offenses are normally graded by bulk quantity. Other illicit drug offenses are normally graded by the number of doses.

(b) If (and only if) the above information is not available, it may be possible to determine the appropriate severity rating from other information in the file [see (g)].

(c) The severity of drug offenses is to be classified by scale. In some cases, the drugs actually confiscated may not accurately reflect the scale of the offense. For example, convincing evidence of negotiations and transactions of large quantities of drugs over a long period of time may be a more appropriate basis for rating the scale of the drug offense than weight/purity if the evidence shows that only one of many shipments was actually confiscated by authorities. Any evidence used to assess the offense severity must meet the preponderance standard, and the facts relied upon must be noted specifically on the Notice of Action.

(d) *Measurement Conversion Chart*

1 ounce = 28.35 grams
1 pound = 453.6 grams
1 pound = .45 kilograms
1 kilogram = 2.2 pounds
1 gallon = 3.8 liters
1 quart = .95 liters
1 kilogram = 1,000 grams
1 gram = 1,000 milligrams
1 grain = 64.8 milligrams

(e) *How to Convert to 'equivalent amounts'.* The following formula is to be used in calculating 100% pure equivalency for cocaine and heroin offenses:

Quantity Involved X . Actual Purity
[expressed in grams] [expressed as a decimal]

***Terms marked by an asterisk are defined in Chapter Thirteen.**

Example (1) If the offense involved 3 ounces of 32.6% pure cocaine, it is first necessary to convert ounces to grams, and then to multiply by the purity expressed as a decimal (i.e., .326). The necessary calculations are:

3	X	28.35	X	.326	=	27.73 grams
(ounces)		(# of grams in an ounce)		(purity)		(100% pure)

Example (2) If the offense involved one-half ounce of 7% pure heroin the necessary calculations are:

.5	X	28.35	X	.07	=	.99 grams
(ounces)		(# of grams in an ounce)		(purity)		(100% pure)

Example (3) If the offense involved 68 grams of 23% pure heroin, the only conversion necessary is to pure heroin equivalency, i.e.: 68 (grams X .23) (purity) = 15.64 grams (100% purity).

(f) *Drug Purity - DEA Form 7*
(1) The presentence report will normally provide drug weight/purity information from DEA Form 7. This is a complicated form. 'Total net weight' [normally in Item 31] refers to the amount of the pure drug. This is the weight used in calculation of the Commission's severity rating. For your information, 'gross weight' is the weight of the drug plus adulterants plus the container (normally found in Item 24). Also normally found in Item 24 is 'net weight' (the weight of the drug plus adulterants). 'Strength' (the percent purity of the drug) is normally found in Item 28. Multiplying 'net weight' x 'strength' is how DEA arrives at the 'total net weight'. Remember, 'total net weight' is the weight of the pure drug to be used in assessing the Commission's severity rating.

(2) If a presentence report does not specify 'total net weight', the probation officer should be contacted for clarification (please be specific as to the clarification necessary; this will enhance feedback/training). Note: DEA lab reports (DEA Form 7), if necessary, also may be obtained directly from the DEA field office for the geographic area in which the offense occurred. If a request to the DEA field office is required, provide the subject's name, date of birth, place of offense, and dates of offense.

(g) If neither weight nor purity is available, but only a money value, DEA may be requested to provide an estimate of the amount of pure drug associated with that money value. In the absence of a specific estimate from DEA pertaining to the particular case, DEA publishes a report (Domestic Drug Prices) providing estimates of average drug prices by year and region from which an estimate may be obtained.

(h) *Determining Offense Severity Relative to Simple Possession of Drugs.* In certain cases, the Commission must determine whether the offense behavior should be considered as "simple possession" of a controlled substance or "possession with intent to distribute". In making this determination, the Commission shall examine a variety of factors (if available). These factors are shown below. The presence of any of the following factors may be considered as a presumption of possession with intent to distribute. However, this presumption may be rebutted if there are circumstances in the individual case which indicate that there was no intention to distribute.

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(1) *Weight/amount/purity of the substance:* Possession of the following amounts of controlled substances are presumed to indicate possession with intent to distribute:

Heroin	1 gm. at 100% purity, or equivalent amount; or more
Cocaine	5 gms. at 100% purity, or equivalent amount; or more
Marijuana	10 lbs. or more
Hashish	3 lbs. or more
Hash Oil	.3 lbs. or more
Drugs (other than above)	1,000 doses or more

(2) *Other Factors:* The presence of any of the following factors may be considered indicative of intent to distribute: the substance has been separated into multiple, individual packets; the offender is a non-user of the substance in question; the presence of instruments used in preparing a substance for sale (e.g., a scale) or a large amount of cash at the scene of the arrest; or the offender was seized with the substance while traveling or was arrested with the substance soon after traveling.]]

CHAPTER TEN - OFFENSES INVOLVING NATIONAL DEFENSE

SUBCHAPTER A - TREASON AND RELATED OFFENSES

1001 Treason
Category Eight.

1002 Rebellion or Insurrection
Category Seven.

SUBCHAPTER B - SABOTAGE AND RELATED OFFENSES

1011 Sabotage
Category Eight.

1012 Enticing Desertion
(a) In time of war or during a national defense emergency, grade as Category Four;
(b) Otherwise, grade as Category Three.

1013 Harboring or Aiding a Deserter
Category One.

SUBCHAPTER C - ESPIONAGE AND RELATED OFFENSES

1021 Espionage
Category Eight.

SUBCHAPTER D - SELECTIVE SERVICE OFFENSES

1031 Failure to Register, Report for Examination or Induction
(a) If committed during time of war or during a national defense emergency, grade as Category Four;

***Terms marked by an asterisk are defined in Chapter Thirteen.**

(b) If committed when draftees are being inducted into the armed services, grade as Category Three;
(c) Otherwise, grade as Category One.

SUBCHAPTER E - OTHER NATIONAL DEFENSE OFFENSES

1041 Offenses Involving Nuclear Energy
Unauthorized production, possession, or transfer of nuclear weapons or special nuclear material or receipt of or tampering with restricted data on nuclear weapons or special nuclear material, grade as Category Eight.

1042 Violations of Export Administration Act (Re: 50 U.S.C. §2410)
Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six. [[*Notes and Procedures.* Conduct not covered by the above described parameters is to be graded under Chapter Twelve.]]

1043 Violations of the Arms Control Act (Re: 22 U.S.C. 2778)
(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armed vehicles, or "high technology" items) as Category Six.
(b) Grade conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

CHAPTER ELEVEN - OFFENSES INVOLVING ORGANIZED CRIMINAL ACTIVITY, GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION, NONGOVERNMENTAL BRIBERY, AND THE ENVIRONMENT

SUBCHAPTER A - ORGANIZED CRIME OFFENSES

1101 Racketeer Influence and Corrupt Organizations (re: 18 U.S.C. 1961-63) Grade according to the underlying offense attempted, but not less than Category Five.

1102 Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise (re: 18 U.S.C. 1952)
Grade according to the underlying offense attempted, but not less than Category Three.

SUBCHAPTER B - GAMBLING OFFENSES

1111 Gambling Law Violations - Operating or Employment in an Unlawful Business (re: 18 U.S.C. §1955)
(a) If large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000); Dice or card games (estimated daily 'house cut' more than $1,000); video gambling (eight or more machines)]; grade as Category Four;
(b) If medium scale operation [e.g., Sports books (estimated daily gross $5,000 - $15,000); Horse books (estimated daily gross $1,500 - $4,000); Numbers bankers (estimated daily gross $750 - $2,000); Dice or card games (estimated daily 'house cut' $400 - $1,000); video gambling (four-seven machines)]; grade as Category Three;

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*Terms marked by an asterisk are defined in Chapter Thirteen.

(c) If small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750); Dice or card games (estimated daily 'house cut' less than $400); video gambling (three or fewer machines)]; grade as Category Two;
(d) Exception: Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

1112 Interstate Transportation of Wagering Paraphernalia (re: 18 U.S.C. §1953)
Grade as if 'operating a gambling business'.

1113 Wire Transmission of Wagering Information (re: 18 U.S.C. §1084)
Grade as if 'operating a gambling business'.

1114 Operating or Owning a Gambling Ship (re: 18 U.S.C. §1082)
Category Three.

1115 Importing or Transporting Lottery Tickets; Mailing Lottery Tickets or Related Matter (re: 18 U.S.C. §1301, §1302)
(a) Grade as if 'operating a gambling business';
(b) Exception: If non-commercial, grade as Category One.

SUBCHAPTER C - OBSCENITY

1121 Mailing, Importing, or Transporting Obscene Matter
(a) If for commercial purposes, grade as Category Three;
(b) Otherwise, Category One.

1122 Broadcasting Obscene Language
Category One.

SUBCHAPTER D - SEXUAL EXPLOITATION OF CHILDREN

1131 Sexual Exploitation of Children* (re: 18 U.S.C. 2251, 2252)
(a) Category Six;
(b) Exception: Where the Commission finds the offender had only a peripheral role (e.g., a retailer receiving such material for resale but with no involvement in the production or wholesale distribution of such material), grade as Category Five.

SUBCHAPTER E - PROSTITUTION AND WHITE SLAVE TRAFFIC

1141 Interstate Transportation for Commercial Purposes
(a) If physical coercion, or involving person(s) of age less than 18, grade as Category Six;
(b) Otherwise, grade as Category Four.
[[*Notes and Procedures.* The term 'for commercial purposes' refers to procuring a sexual partner for another for profit.]]

1142 Prostitution
Category One.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER F - NON-GOVERNMENTAL CORRUPTION

1151 Demand or Acceptance of Unlawful Gratuity Not Involving Federal, State, or Local Government Officials

Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

1152 Sports Bribery

If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

SUBCHAPTER G - CURRENCY OFFENSES

1161 Reports on Monetary Instrument Transactions

(a) If very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000), grade as Category Six;
(b) If large scale (e.g., the estimated gross amount of currency involved is more than $200,000 but not more than $1,000,000), grade as Category Five;
(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $40,000 but not more than $200,000), grade as Category Four;
(d) If small scale (e.g., the estimated gross amount of currency involved is less than $40,000), grade as Category Three.

SUBCHAPTER H - ENVIRONMENTAL OFFENSES

1171 Knowing Endangerment Resulting From Unlawful Treatment, Transportation, Storage, or Disposal of Hazardous Waste [Re: 42 U.S.C. §6928(e)]

(a) If death results, grade as Category Seven;
(b) If serious bodily injury results, grade as Category Six;
(c) Otherwise, grade as Category Five.
(d) Note: Knowing Endangerment requires a finding that the offender knowingly transported, treated, stored, or disposed of any hazardous waste and knew that he thereby placed another person in imminent danger of death or serious bodily injury.

1172 Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. §6928(d)(1-2)]

(a) If death results, grade as Category Six;
(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $200,000, or a community is evacuated for more than 72 hours), grade as Category Five;
(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $40,000-$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;
(d) Otherwise, grade as Category Three;
(e) Exception: Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

[[*Notes and Procedures*. Grade environmental offenses not listed above under Chapter 12.]]

***Terms marked by an asterisk are defined in Chapter Thirteen.**

CHAPTER TWELVE - MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One - Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One - Eleven, the following formula may be used as a guide.

Maximum Sentence Authorized by Statute [Not necessarily the sentence imposed]	Grading (Category)
< 2 yrs	1
2 - 3 yrs	2
4 - 5 yrs	3
6 - 10 yrs.	4
11 - 20 yrs.	5
21 - 29 yrs.	6
30 yrs - life.	7

CHAPTER THIRTEEN - GENERAL NOTES AND DEFINITIONS

SUBCHAPTER A - GENERAL NOTES

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. Exception: in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level.

   (a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating. In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	*Points*	*Severity*	*Points*
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3		

Examples: 3 Category Five Offenses [3x(9)=27] = Category Six
5 Category Five Offenses [5x(9)=45] = Category Seven
2 Category Six Offenses [2x(27)=54] = Category Seven

(b) The term *'multiple separate offenses' generally refers to offenses committed at different times*. However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (1) unrelated offenses, and (2) offenses involving the unlawful possession of weapons during commission of another offense.

[[*Notes and Procedures.*

Examples:

(1) An offender commits a robbery (Category Five) in which he steals $80,000 (Category Four). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Five) and not as multiple separate offenses.

(2) An offender commits a robbery (Category Five) in which shots are fired to scare the bank employees (Category Six). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Six) and not as multiple separate offenses.

(3) An offender when arrested for smuggling aliens is found also in possession of $8,000 worth of stolen goods. Even though the offenses were discovered at the same time, they are unrelated; therefore consideration under the multiple separate offenses procedure is appropriate.

(4) An offender commits two robberies with a sawed-off shotgun. Grade under the multiple offense procedure as 3 Category Five offenses (3 x 9 = 27 points) = Category Six.

(5) An offender robs four banks and each time he uses a sawed-off shotgun. The offense severity is based upon four robberies (4 x 9 points = 36 points) and one offense of possessing a sawed-off shotgun (9 points) for a total offense rating of Category Seven (45 points). Note that possession of a sawed-off shotgun is treated as one offense for purposes of calculating the offense severity even though the weapon was used to rob four separate banks.]]

(c) For offenses *graded according to monetary value (e.g., theft) and drug offenses*, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

[[*Notes and Procedures.*

Examples:

(6) An offender forges ten $1,000 checks for a total of $10,000, and is then arrested. Grade as a $10,000 forgery, not ten separate offenses.

(7) An offender steals for resale four automobiles worth a total of $18,000, and is later arrested. Grade as an $18,000 theft, not four separate offenses.

(8) An offender breaks into a store, steals $18,000 worth of merchandise and does $4,000 damage to the store. Grade as a Category Four offense according to the combined property loss ($18,000 + $4,000 = $22,000).

(9) An offender sells 10 grams of pure heroin on four separate occasions, and is later arrested. Grade as a sale of 40 grams of pure heroin and not four separate offenses.

(10) The offender sells 14,000 doses of PCP and 1,000 lbs. of marijuana. He is then arrested. The amount of the drugs is added together based upon a

proportion of the amount of drugs involved in the offense compared to the amount of the drugs needed to raise the offense to the next higher category. In this example, 14,000 doses of PCP is 70% of the amount needed to rate the offense as Category Five and 1,000 lbs. of marijuana is 50% of the amount needed to rate the offense as Category Five. The PCP and marijuana added together equal over 100% of the amount of drugs necessary for a Category Five rating, which is the correct severity rating for this offense.

(11) An offender (with a nonperipheral role) sells 10,000 lbs. of hashish (Category Six) and 250,000 doses of amphetamines (Category Six). He is then arrested. The applicable offense rating is Category Six which is the highest severity category for any combined amount of the above drugs.]]

(d) *Intervening Arrests*. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

[[*Notes and Procedures*.

Examples:

(12) An offender commits 3 Category One larcenies (each $300). Each time the offender is arrested during the act. Ordinarily, such behavior would be graded as Category One (theft of $900). But since the offenses were each separated by intervening arrests, application of the multiple separate offense procedure (3 x 1/9 = 1/3 points) results in a higher severity category. Therefore, grade as Category Two.

(13) An offender is arrested on three separate occasions unlawfully transporting aliens. Since the offenses were separated by intervening arrests, grade as Category Four (3 x 1 = 3 points).]]

(e) *Income Tax Violations Related to Other Criminal Activity*. Where the circumstances indicate that the offender's income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.

3. **In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.**

4. **The prisoner is to be held accountable for his own actions and actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have been reasonably expected to foresee.** [[*Notes and Procedures*. Example: An offender on one occasion steals $2000 worth of property and sells it to a fence, who is engaged in an ongoing operation. It if is not established that the offender was himself an active participant in the ongoing operation, he is to be held accountable only for the one incident.]]

5. **The following are examples of circumstances that may be considered as aggravating factors: extreme cruelty or brutality to a victim; the degree of permanence or likely permanence of serious bodily injury resulting from the offender's conduct; an offender's conduct while attempting to evade arrest**

that causes circumstances creating a significant risk of harm to other persons (e.g., causing a high speed chase or provoking the legitimate firing of a weapon by law enforcement officers).

6. The phrase 'may be considered an aggravating/mitigating factor' is used in this index to provide guidance concerning certain circumstances which may warrant a decision above or below the guidelines. This does not restrict consideration of above or below guidelines decisions only to these circumstances, nor does it mean that a decision above or below the guidelines is mandated in every such case.

SUBCHAPTER B - DEFINITIONS

1. 'Accessory after the fact' refers to the conduct of one who, knowing an offense has been committed, assists the offender to avoid apprehension, trial, or punishment (e.g., by assisting in disposal of the proceeds of an offense). Note: Where the conduct consists of concealing an offense by making false statements not under oath, grade as 'misprision of felony'. Where the conduct consists of harboring a fugitive, grade as 'harboring a fugitive'.

2. 'Assassination kit' refers to a disguised weapon designed to kill without attracting attention. Unlike other weapons such as sawed-off shotguns which can be used to intimidate, assassination kits are intended to be undetectable in order to make the victim and bystanders unaware of the threat. A typical assassination kit is usually, but not always, a firearm with a silencer concealed in a briefcase or similar disguise and fired without showing the weapon.

3. 'Bodily injury' refers to injury of a type normally requiring medical attention [e.g., broken bone(s), laceration(s) requiring stitches, severe bruises].

4. 'Carnal knowledge' refers to sexual intercourse with a female who is less than 16 years of age and is not the wife of the offender.

5. 'Extortionate extension of credit' refers to any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

6. 'Failure to appear' refers to the violation of court imposed conditions of release pending trial, appeal, or imposition or execution of sentence by failure to appear before the court or to surrender for service of sentence. [[*Notes and Procedures*. 'Failure to appear' is not a strict liability offense. To consider a 'failure to appear' in the absence of a conviction for such offense, the Commission must find upon the information presented that such failure was willful.]]

7. 'Forcible felony' includes, but shall not be limited to, kidnaping, rape or sodomy, aircraft piracy or interference with a flight crew, arson or property destruction offenses, escape, robbery, extortion, or criminal entry offenses, and attempts to commit such offenses.

8. 'Involuntary manslaughter' refers to the unlawful killing of a human being without malice in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and

circumspection, of a lawful act which might produce death. [[*Notes and Procedures.* A finding of involuntary manslaughter should only be made where the evidence shows that "gross negligence" (i.e., wanton or reckless disregard for human life) and the offender knew that his conduct was a threat to the lives of others, or had knowledge of such circumstances as could reasonably have enabled him to foresee the peril to which his act might subject others.

Example 1: An offender, driving while intoxicated and at a high rate of speed, violates the no-passing zone and collides with a car in the opposite lane, killing the other driver.

Example 2: An offender, shooting a high-powered rifle, fires at targets close to a park he knows is well populated and kills a picnicker.

Examples 1 & 2 represent cases which would warrant a finding of "gross negligence".

Example 3: An offender, driving without a valid license, and traveling 35 m.p.h. in a 25 m.p.h. zone, strikes and kills a jogger who violates the no-walk sign at an intersection.

In Example 3, these circumstances probably establish only ordinary negligence and do not warrant a finding of involuntary manslaughter.]]

9. **'Misprision of felony' refers to the conduct of one who, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority. The 'concealment' described above requires an act of commission (e.g., making a false statement to a law enforcement officer).**

10. **'Murder' refers to the unlawful killing of a human being with malice aforethought. 'With malice aforethought' generally refers to a finding that the offender formed an intent to kill or do serious bodily harm to the victim without just cause or provocation.**

11. **'Opiate' includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.**

12. **'Other illicit drug offenses' include, but are not limited to, offenses involving the following: amphetamines, hallucinogens, barbiturates, methamphetamines, and phencyclidine (PCP).**

13. **'Other medium of exchange' includes, but is not limited to, postage stamps, governmental money orders, or governmental coupons redeemable for cash or goods.** [[*Notes and Procedures.* The term "other medium of exchange" does not include checks or credit cards.]]

14. **'Peripheral role' in drug offenses refers to conduct such as that of a person hired as a deckhand on a marijuana boat, a person hired to help offload marijuana, a person with no special skills hired as a courier of drugs on a commercial airline flight, or a person hired as a chauffeur in a drug transaction. This definition does not include persons with decision-making or supervisory authority, persons with relevant special skills (e.g., a boat captain, chemist, or airplane pilot), or persons who finance such operations.** [[*Notes and Procedures.* (a) Do not presume that an offender's role is peripheral. If an affirmative finding can be made, using the preponderance of the evidence standard, that the offender had a peripheral role in the offense,

then the appropriate lower severity rating shall be selected. If no affirmative finding of a peripheral role can be made, then the higher severity rating shall be selected. In determining whether the offender had a peripheral role, the Commission may consider, among other factors, whether the evidence on the offender's role is only his bare assertion of peripheral involvement or whether the offender provided law enforcement authorities with timely details on such matters as the identity of his employer, the source of the drugs, and delivery or operating instructions.

Example 1: A person is arrested at customs with a large quantity of pure cocaine. The person claims to be a courier but does not cooperate with the arresting agency. In the absence of other information pertaining to the offender's role, no affirmative finding of a peripheral role would appear warranted.

Example 2: A person is arrested at a customs check with a large quantity of pure cocaine. He promptly provides DEA agents with his delivery instructions, although no 'controlled' delivery is then attempted. It is established that he has been working as a day laborer, and has been living at the poverty level. In such a case, the Commission may find that a preponderance of the evidence indicates a peripheral role.

(b) The following are some examples of offenders normally graded as having a peripheral role. This is not intended as an exhaustive or definitive listing: (1) a crewman on a marijuana boat; (2) a person hired to operate a small launch to offload marijuana; (3) a person hired to smuggle cocaine aboard a regularly scheduled commercial flight; (4) a person hired as a lookout, chauffeur, or bodyguard.

(c) The following are some examples of offenders who do not have a peripheral role. This is not intended as an exhaustive or definitive listing: (1) an individual who is hired to go to South America and negotiate the purchase of more than 1 kilogram of pure cocaine and arrange its delivery into the United States; (2) an individual who negotiates the sale of more than 1 kilogram of pure cocaine on behalf of the owner of the drug; (3) the financier of a PCP lab producing more than 200,000 doses of PCP; (4) the captain of a freighter hired to import 20,000 pounds or more of marihuana; (5) the captain/owner of a fishing boat hired to import more than 1 kilogram of pure cocaine; (6) the pilot of a private airplane hired to import more than 1 kilogram of pure cocaine; (7) a chemist hired to operate a PCP laboratory.]]

15. **'Protected person' refers to a person listed in 18 U.S.C. 351 (relating to Members of Congress), 1116 (relating to foreign officials, official guests, and internationally protected persons), or 1751 (relating to presidential assassination and officials in line of succession).**

16. **'Sawed-off shotgun' refers to a shotgun which has a barrel length of less than 18 inches or an overall length of less than 26 inches.**

17. **'Serious bodily injury' refers to injury creating a substantial risk of death, major disability or loss of a bodily function, or disfigurement.**

18. **'Serious bodily injury is the result intended' refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the**

intended object. Where the circumstances establish that murder was the intended object, grade as an 'attempt to murder'.

19. **'Sexual exploitation of children' refers to employing, using, inducing, enticing, or coercing a person less than 18 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distribution for sale, or knowingly distributing for sale such visual or print medium.**

20. **'Trafficking in stolen property' refers to receiving stolen property with intent to sell.**

21. **'Value of the property' refers to the estimated replacement cost to the victim.** [[*Notes and Procedures.* The term "value of the property" refers only to primary losses; not secondary losses. Example (1): An offender defrauds a victim of $50,000. The value of the property is $50,000; not any interest or dividends that the victim would have earned had the money been put into a legitimate investment. Example (2): An offender steals tools worth $16,000; the victim sustains an additional $500 in lost wages during the time spent testifying at trial. The value of the property stolen is the value of the tools.]]

22. **'Voluntary manslaughter' refers to the unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.**

SALIENT FACTOR SCORE (SFS 81)

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) .... ☐

None .... = 3
One .... = 2
Two or Three .... = 1
Four or More .... = 0

Item B: PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS .... ☐
(ADULT OR JUVENILE)

None .... = 2
One or Two ...... = 1
Three or More ... = 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS .... ☐

Age at commencement of current offense
26 years or age or more .... = 2
20-25 years of age .... = 1
19 years of age or less .... = 0

***Exception: If five or more prior commitments of more than thirty days (adult of juvenile), place an "X" here _______ and score this item .... = 0

Item D: RECENT COMMITMENT FREE PERIOD (THREE YEARS) .... ☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense .... = 1

Otherwise .... = 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR .... ☐
THIS TIME

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time .... = 1

Otherwise .... = 0

Item F: HEROIN/OPIATE DEPENDENCE .... ☐

No history of heroin/opiate dependence ... = 1
Otherwise .... = 0

TOTAL SCORE .... ☐

Note: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

SALIENT FACTOR SCORING MANUAL. The following instructions serve as a guide in computing the salient factor score.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more.... = 0]]

A.1 *In General.* Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together). Do not count the current federal offense or state/local convictions resulting from the current federal offense (i.e., offenses that are considered in assessing the severity of the current offense). Exception: Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (e.g., after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

A.2 *Convictions*

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the salient factor score, use the offense of conviction.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. contempt of court;
2. disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering loud and abusive language;
3. driving without a license/with a revoked or suspended license/with a false license;
4. false information to a police officer;
5. fish and game violations;
6. gambling (e.g., betting on dice, sports, cards) [Note: Operation or promotion of or employment in an unlawful gambling business is not included herein];
7. loitering;
8. non-support;
9. prostitution;
10. resisting arrest/evade and elude;
11. trespassing;
12. reckless driving;
13. hindering/failure to obey a police officer;
14. leaving the scene of an accident (except as listed under (a)).

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. hitchhiking;
2. local regulatory violations;
3. public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. traffic violations (except as specifically listed);
5. vagrancy/vagabond and rogue;
6. civil contempt.

A.3 *Juvenile Conduct*. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 *Military Conduct*. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. Note: This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 *Diversion*. Conduct resulting in diversion from the judicial process without a finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

A.6 *Setting Aside of Convictions/Restoration of Civil Rights*. Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7 *Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error*. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. Note: Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, if the offender has applied to have a conviction vacated and provides evidence (e.g., a letter from the court clerk) that the required records are unavailable, do not count the conviction. Note: If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 *Ancient Prior Record*. If both of the following conditions are met: (1) the offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes of Items A, B, or C. Note: This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 *Foreign Convictions.* Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 *Tribal Court Convictions.* Tribal court convictions are counted under the same terms and conditions as any other conviction.

A.11 *Forfeiture of Collateral.* If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.12 *Conditional/Unconditional Discharge (New York State).* In N.Y. State, the term 'conditional discharge' refers to a conviction with a suspended sentence and unsupervised probation; the term 'unconditional discharge' refers to a conviction with a suspended sentence. Thus, such N.Y. state dispositions for countable offenses are counted as convictions.

A.13 *Adjudication Withheld (Florida).* In Florida, the term "adjudication withheld" refers to a disposition in which a formal conviction is not entered at the time of sentencing, the purpose of which is to allow the defendant to retain his civil rights and not to be classified as a convicted felon. Since the disposition of "adjudication withheld" is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of "adjudication withheld" are to be counted as convictions for salient factor scoring purposes. However, it is not considered a conviction on which forfeiture of street time can be based.

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None = 2; One or two = 1; Three or more = 0]]

B.1 *Count* all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 *Count* only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed as the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

D.3 *Definitions*

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to 'time served'. If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less. Count a sentence to intermittent confinement (e.g., weekends) totalling more than 30 days.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It does not include foster home placement. Count confinement in a community treatment center when part of a committed sentence. Do not count confinement in a CTC when imposed as a condition of probation or parole. Do not count self commitment for drug or alcohol treatment.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. Note: Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. Example: An offender is sentenced to a term of three years confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (e.g., escape or failure to report for service of sentence).

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE)

C.1 *Score 2* if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 *Score 1* if the subject was 20-25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 *Score 0* if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

C.4 *Definitions*

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS)

D.1 *Score 1* if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 *Score 0* if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 *Definitions*

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

E.1 *Score 1* if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 *Score 0* if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 *Definitions*

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. Note: Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

ITEM F. HISTORY OF HEROIN/OPIATE DEPENDENCE

F.1 *Score 1* if the subject has no history of heroin or opiate dependence.

F.2 *Score 0* if the subject has any record of heroin or opiate dependence.

F.3 *Ancient Heroin/Opiate Record.* If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 *Definition.* For calculation of the salient factor score, the term "heroin/opiate dependence" is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as as negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

SPECIAL INSTRUCTIONS - FEDERAL PROBATION VIOLATORS

Item A Count the original federal offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. Note: the prisoner is still credited with the time served toward the current commitment.

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. Exception: A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

SPECIAL INSTRUCTIONS - FEDERAL PAROLE VIOLATORS

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior/parole violation behavior.

Item D Count backwards three years from the commencement of the new criminal behavior/parole violation behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

SPECIAL INSTRUCTIONS - FEDERAL CONFINEMENT/ESCAPE STATUS VIOLATORS WITH NEW CRIMINAL BEHAVIOR IN THE COMMUNITY

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

Notes and Procedures

▌2.20-01. *Purpose of the Guidelines*

A. From the Parole Commission and Reorganization Act Public Law 94-233, 18 United States Code

§4206 Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

> "(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and "(2) that release would not jeopardize the public welfare;

Subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon."

B. From Joint Explanatory Statement of the Committee of Conference, The Parole Commission and Reorganization Act - Section by Section Analysis

§4206 Parole determination criteria

"This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public perception of and respect for the law. It is the view of the Conferees that the U. S. Parole Commission is jointed in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the "depreciate the seriousness" criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications *(sic)* prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of Title 18, United States Code. The term "holidays" as used in this section refers to congressionally declared Federal holidays. This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appeals Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If the decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

■ 2.20-02. *Completion of the Guidelines.* The applicable guideline evaluation worksheet shall be completed at all initial, revocation, and rescission hearings. It will be referred to in the summary at all subsequent hearings. In each case, the panel shall review the guidelines and, prior to making a recommendation, shall consider whether there is 'good cause' for a decision outside the guidelines, or whether a decision within the guidelines is appropriate.

■ 2.20-03. *Calculating Time in Custody*

Time in custody means only time in actual physical custody. Time on probation does not count as time in custody. Nor does time on escape status count. Moreover, a sentence for contempt of court interrupts the running of the federal criminal sentence. Thus, any time spent as a result of a sentence of civil contempt is not counted in calculating time in custody.

A. Original Parole Consideration. Calculate the number of months in actual physical custody on the present federal sentence(s). Include jail time credit. If the subject was received directly from state custody, where he was serving time on state charges only, count only the time since the federal sentence began. If a subject has been in state custody for a substantial period, this may be considered in determining whether a decision below the guidelines is warranted. However, it should not be counted as time in custody for purposes of guideline calculation.

B. Probation Revocation Cases. Credit any time spent in actual physical custody (federal or state) for any offense considered in assessing offense severity. If a prisoner is received as a probation violator from a split sentence, also credit the months spent in federal custody prior to being placed on probation.

C. Parole Violators (Reparole Consideration). In reparole guideline cases, count as time in custody any time spent in actual physical custody (whether state or federal) as a result of the actions leading to parole violation. [Example: A parolee is convicted of a state charge of forgery and spends 10 months in state custody; he is in federal custody an additional 2 months at the time of his revocation hearing. Time in custody for reparole guideline purposes is 10 + 2 = 12 months.]

2.20-04. *Offense Severity Rating.* In applying the guidelines, the offense severity rating shall reflect the overall circumstances of the present offense behavior. Select the offense rating appropriate to the actual offense behavior that occurred. The severity rating must be explained on the Notice of Action Worksheet (in the space provided) by a brief summary of the specific facts that justified the rating. 28 C.F.R. §2.19(c) provides: "The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt)."

Information in the file describing offense circumstances more severe than reflected by the offense of conviction (for example, information contained in a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon to select an appropriately higher severity rating only if such information meets the standard indicated in 28 C.F.R. §2.19(c). The normal indicants of reliability are (a) the report is specific as to the behavior alleged to have taken place; (b) the allegation is corroborated by established facts; and (c) the source of the allegation appears credible. The prisoner is to be informed of the allegation at the hearing and given an opportunity to respond. An allegation that is vague, unsupported, or comes from an unreliable source should not be considered. Cases requiring further information or verification may be referred to the Regional Office.

The Commission's consideration of aggravating offense circumstances in applying its guidelines has been approved in the following cases: *Zannino* v. *Arnold*, 531 F.2d 687 (3d Cir. 1976) [allegation that offense was a "large-scale conspiracy" committed in an "unusually sophisticated" manner]; *Brown* v. *Lundgren*, 528 F.2d 1050 (5th Cir. 1976) [circumstances not given in the opinion but involved pattern of on-going criminal behavior and multiple separate offenses]; *Grattan* v. *Sigler*, 525 F.2d 329 (9th Cir. 1975) [allegation that the prisoner was a "ringleader"]; *Foddrell* v. *Sigler*, 418 F.Supp. 324 (M.D. Pa. 1976) ["sophisticated operation involving large amounts of heroin"]; and *Biancone* v. *Norton*, 421 F.Supp. 1044 (D.

Conn. 1976) [multiple separate offenses]; and in the cases cited below. Similarly, Commission's consideration of unadjudicated offenses has been approved in the following cases: *Billiteri* v. *United States Board of Parole*, 541 F.2d 938 (2d Cir. 1976) [offense rated as extortion based on information in the pre-sentence report; the Court specifically rejected the contention that the Government's acceptance of a plea restricted to the conspiracy charge was a bar to the Commission from considering the actual offense behavior]; *Bistram* v. *U.S. Parole Board*, 535 F.2d 329 (5th Cir. 1976) [Commission relied upon dismissed count of kidnapping notwithstanding bargained plea to bank robbery only]; *Lupo* v. *Norton*, 371 F.Supp. 156 (D. Conn. 1974) [prisoner convicted of conspiracy to transport stolen goods was alleged to have committed robbery to obtain same]; and *Manos* v. *U.S. Board of Parole*, 399 F.Supp. 1103 (M.D. Pa. 1975). [Prisoner pleaded guilty to two counts of filing false tax reports involving less than $20,000 but Commission considered entire 22-count indictment charging a total defrauding of $150,000]. These decisions have accorded to the Parole Commission the same scope of discretion as that exercised by the sentencing courts. As stated in *Billiteri, supra*, at 444:

> "If therefore, the sentencing judge is not limited to a consideration of only that criminal conduct of the defendant that is related to the offense for which he was convicted, the Parole Board, which is concerned with all facets of a prisoner's character, make-up and behavior, is *a fortiori*, certainly entitled to be fully advised of the contents of the presentence report and to use it in giving an offense severity rating and for such other purposes as it finds necessary and proper. . ."

▌2.20-05. *Decisions Outside the Guidelines*

A. In General. 18 U.S.C. §4206 provides that the Commission may render a decision outside the guidelines for good cause provided the prisoner is furnished a specific explanation for such action. It is in the Commission's discretion to render a decision outside the guidelines (whether above or below) provided the circumstances warrant and such decision is adequately explained. The reasons given in the Notice of Action for a decision above or below the guidelines must explain what specific facts were relied upon to distinguish that case from the "typical" cases for which the guidelines are set. If a decision outside the guidelines follows the recommendation of the sentencing judge, the prosecutor or another interested party, it is not sufficient to cite that recommendation as the reason for departure from the guidelines. Instead, the Notice of Action must state the reasoning and factual basis for the recommendation which was found to justify a decision outside the guidelines.

The following are examples of situations in which a decision outside the guidelines appropriately may be considered. This does not mean that these are the only situations in which a decision outside the guidelines may be considered. Nor does it mean that a decision outside the guidelines is mandated for every such case.

Each of the following examples sets forth the Commission's reason for its decision and the specific facts primarily relied upon in support of that reason. Avoid sweeping or ambiguous phrases as well as irrelevant facts. Be specific enough with the facts described so that a person not familiar with the case will know what you are talking about.

B. Decisions Above the Guidelines

[Examples 1-3: Aggravating Offense Factors]

1. Aggravated nature of the offense behavior:

. . .because of the aggravated nature of your offense behavior: victims were repeatedly beaten and threatened during the offense.

. . .because of the aggravated nature of your offense behavior: you were responsible for an offense of unusual magnitude - investors were defrauded of over ten million dollars during a period of five years.

2. Extremely vulnerable victim(s) [e.g., extremely young or aged, or mentally or physically handicapped].

. . .because of the aggravated nature of your offense behavior which involved an extremely vulnerable victim: you committed the sexual assault of a 10 year old girl.

. . .because of the aggravated nature of your offense behavior: you distributed a controlled substance near an elementary school.

3. Unusually extensive, organized criminal enterprise:

. . .because of the aggravated nature of your offense behavior: you were a ringleader in an unusually extensive, sophisticated criminal enterprise over an eighteen month period which engaged in the fencing of furs and jewelry stolen in numerous burglaries, and involved an extensive network of contacts and sophisticated methods of concealing the origin of the stolen goods.

. . .because of the aggravated nature of your offense behavior: you played a leadership role in an unusually extensive, organized criminal enterprise - a cocaine importation and distribution operation which involved monthly multi-kilo shipments over a two year period and a multi-state distribution network with over twelve co-conspirators acting under your direction.

[[This provision is particularly applicable to offenders with a leadership role in an organized criminal conspiracy involving more than ten persons]].

[Examples 4-7: Parole Prognosis]

4. Poorer Parole Risk:

. . .because you are a poorer parole risk than indicated by your salient factor score in that you have repeatedly failed to adjust to previous periods of parole supervision.

. . .because you are a poorer parole risk than indicated by your salient factor score: you committed a state firearms act offense while on bond in your present criminal case.

. . .because you are a poorer parole risk than indicated by your salient factor score: you have an approximately twenty year history of alcohol abuse [cocaine, PCP, etc.] which is related to your criminal behavior.

. . .because you are a poorer parole risk than indicated by your salient factor score: [you have had an on-going involvement in loan-sharking and extortion activities for the past 10 years] [you have admitted to on-going involvements in drug trafficking for the past 10 years].

5. More Serious Parole Risk (History of repetitive assaultive behavior):

. . .because you are a more serious parole risk than indicated by your salient factor score due to your history of repetitive *assaultive behavior:* [give specifics, e.g., your prior record shows a conviction for aggravated assault and a conviction for armed robbery. Your present offense behavior involved a bank robbery in which an overt threat of violence was made].

6. *More Serious Parole Risk (History of repetitive sophisticated criminal behavior):*

. . .because you are a more serious parole risk than indicated your salient factor score due to your history of repetitive sophisticated criminal behavior: three out of five prior convictions involve sophisticated fraud similar to your current offense.

7. *More Serious Parole Risk (Unusually extensive and serious prior record):*

. . .because you are a more serious parole risk than indicated by your salient factor score due to your extensive and serious prior record [e.g., you have eight previous convictions for serious offenses (give specifics)].

[Example 8: Institutional Misconduct]

8. *Specified instance of institutional misconduct:*

. . .because you failed to maintain a good institutional record. You were found to have [been in an unauthorized area without permission] [possessed narcotic paraphernalia] by an institutional disciplinary committee on September 9, 1976. [NOTE: Consult Rescission Guidelines for appropriate penalty].

[Example 9: Other]

9. *Other*

. . .because you have refused to [make restitution] [return the property stolen] [pay an outstanding fine] although you have the ability to do so. [Note: where a decision above the guidelines is rendered, the Notice of Action may advise the prisoner that should there be a change in circumstances (e.g., restitution or a full accounting of his finances made), the prisoner may request reopening of the case under 28 C.F.R. §2.28(a).]

C. *Decisions Below the Guidelines*

[Examples 1-6: Mitigating Offense Factors]

1. *Mitigating Offense Factors:*

. . .The prisoner's offense was less serious than the rated offense would normally be: [give specifics] [e.g., the amount of drugs sold was unusually small and no financial gain was involved] [the prisoner was only peripherally involved in the offense].

. . .The prisoner did not knowingly contemplate that his conduct would result in the harm that it did and the harm could not have been reasonably foreseen [give specifics].

2. *Diminished Mental Capacity:*

. . .The prisoner had diminished mental capacity to contemplate the seriousness of the offense [because of extremely low intelligence or extreme youthfulness].

3. *Duress:*

. . .There is confirmed evidence that duress was overtly exercised to force the prisoner to commit the offense.

4. *Attempted Corrective Measure:*

. . .There is confirmed evidence that the prisoner attempted to withdraw prior to completion of the offense or attempted to make restitution prior to discovery of the offense.

5. *Genuine Claim of Right [Property Offenses]:*

. . .because the prisoner believed he had genuine claim of right to the property involved even though the method used to obtain the property was unlawful.

6. *Extreme Provocation [Assaultive Offenses]:*

...because there was extraordinarily severe provocation by the victim or provocation combined with a diminished mental state (occurring through no fault of the offender).

[Example 7: Parole Prognosis]

7. *Better Parole Risk*

. . .The prisoner is a better parole risk than his salient factor score indicates because [give specifics] [e.g., his low salient factor score results exclusively from trivial offenses; substantial crime-free period since his last offense; he has extremely strong community resources available].

[Examples 8-10: Other]

8. *Substantial Cooperation:*

. . .The prisoner has provided substantial cooperation to the government [e.g., in the prosecution of other cases; in averting a riot] which has been otherwise unrewarded.

9. *Substantial Medical Problems:*

. . .Because of poor medical prognosis due to a heart condition [terminal cancer].

10. *Substantial Period in Custody on other Sentence(s) or Additional Committed Sentences:*

. . .The prisoner has served a substantial continuous period of time [. . . . months] in federal or state custody as a result of other charges.

. . .The prisoner faces a substantial period of time on additional committed sentences estimated as at least [. . . . months].*

**NOTE*: Deportation shall not be considered a sufficient reason for a decision below the guidelines.

[Example 11: Superior Program Achievement]

11. Superior Program Achievement:

. . .The prisoner has a record of superior program achievement [give specifics]. *NOTE:* Decisions below the guidelines for superior program achievement are governed by 28 C.F.R. §2.60.

■ 2.20-06. *Clinical Judgment Regarding Parole Risk.* One of the more difficult tasks facing the parole decision-maker is the consideration as to when a decision above or below the applicable guideline range is warranted based upon a clinical judgment to override the salient factor score. An excellent discussion of the application and limitations of clinical judgment, and particularly of its relation to the prediction of violence, is found in *Monahan,* "The Clinical Prediction of Violent Behavior" (in Parole Commission Selected Reprints - Volume Four).

Clinical override judgments are of two distinct types:

(A) *More serious parole risk.* This judgment concerns whether a parole applicant poses a significantly higher likelihood of committing violent or other extremely serious offenses after release than is taken into account by the guidelines [which consider the current offense and salient factor score]. Offenders with a repetitive history of assaultive conduct, a repetitive history of large scale sophisticated offenses, or an extensive history of serious offenses may be considered for a decision above the guidelines under this provision. [See 2.20-05(B)(5-7)].

(B) *Better/poorer parole risk.* This judgment concerns whether a parole applicant poses a significantly lower or higher likelihood of any new criminal conduct after release than indicated by the salient factor score. [See 2.20-05(B)(4); (C)(7)]. In such case, a parole applicant may be given a decision below or above the guidelines (as if the parole applicant had a higher or lower salient factor score).

Note that a decision below the lower limit of the 'very good' risk category cannot be authorized on the basis of 'risk'. [The lower limit of the 'very good' risk guideline range is set upon the presumption that an individual with a salient factor score of ten will not recidivate].

Note that a decision above the upper limit of the 'poor risk' category may be warranted on the grounds of 'poorer risk' in certain extreme cases [e.g., where the prisoner has a substantially worse prior record than the typical case with a score of zero. But also note that the majority of prisoners with a salient factor score of zero have 8-12 prior convictions and 6-9 prior commitments. Prior negative parole histories are also frequent. A decision above the upper limit of the 'poor risk category' on the basis of 'poorer risk' should be considered only where such case can logically be distinguished from the typical case with a score of zero].

■ 2.20-07. *Principle of Parsimony.* It is the intent of the Commission to use the least restrictive sanction required to fulfill the purposes of 18 U.S.C. 4206 and 28 C.F.R. §2.20. It is expected that when a decision within the guidelines is recommended, a case generally will be placed in the lower half of the guideline range unless the offense behavior or prior record/salient factor score is among the more serious contained within the category [For example, other factors being equal, a property offense near the lower limit of the Category Four severity ($40,000) generally would be placed towards the bottom of the range; a property offense near the upper limit ($200,000) generally would be placed higher in the range; less culpable codefendants would generally be placed towards the bottom of the range;

codefendants with prime responsibility would generally be placed higher in the range]. If the offense behavior involved (a) the possession of a weapon during the commission of another offense (e.g., robbery with a weapon, or possession of a weapon during a drug offense); or (b) the offense behavior involved multiple separate Category Five or higher offenses not sufficient to raise the severity level (e.g., two robberies); or (c) the offender is a parole violator with new criminal conduct, the case will normally be placed in the upper half of the applicable guideline range. It is to be stressed that this paragraph is intended to provide a methodology to promote analysis, not a mechanical rule.

▮ 2.20-08. *Guideline Application - Complex Cases*. The following is designed to assist in guideline interpretation of certain complex cases.

(1) *Cases Reopened for a New Sentence.*
(a) If the new criminal conduct was before the most recent commitment (e.g., if it is later discovered that the prisoner had committed three additional robberies), conduct a new initial hearing using the total offense behavior (multiple offense rule), and set a new presumptive date [*de novo*].

(b) If the new criminal conduct was committed during the most recent commitment and the prisoner has been given a presumptive or effective parole date, apply the rescission guidelines and add the time to the previous presumptive or effective parole date. That is, treat exactly as a rescission case for guideline purposes (but otherwise treat as a new initial hearing; no rescission findings are required).

(c) If the new criminal conduct was committed during the most recent commitment and the prisoner had previously been continued to expiration, use initial hearing procedures, but calculate the rescission guidelines and stack the guideline range(s) to the original guideline range.

> Example: A 30 year old first offender (non-opiate dependent) is continued to expiration on a 15 month sentence for fraud of $20,000. He escapes from a non-secure facility and three months later is arrested and convicted of a $5,000 fraud committed while in escape status and given a consecutive 5 year sentence. The applicable guidelines on the total sentence are the original guidelines [Category Four severity (original offense); SFS=10; GL range 12-18 months] + [8-16 months for escape] + [Category Three severity (new offense); recalculated SFS=6, GL range 12-16 months] = [combined GL range of 32-50 months].

2. *Initial Hearing (No Previous Hearing) Where There Is 'New Criminal Conduct Since Commitment*. Use initial hearing procedure; consider the case using the guideline procedure specified under 1(c). That is, first calculate the guideline range without considering the escape or new criminal behavior; then stack the ranges for escape and/or the new criminal behavior as in a rescission case (recalculate the salient factor score if the new criminal behavior was committed in the community).

> Example: A 30 year old first offender (non-opiate dependent) robs a bank. Before having an initial hearing, the offender escapes and five weeks later robs another bank. The applicable guideline range is calculated as follows: [Category Five (original offense); SFS=10; GL range = 24-36 months] + [8-16 months for escape] + [Category Five (new offense); SFS (recalculated) = 6; GL range = 36-48 months] = [combined GL range of 68-100 months].

3. ***Initial Hearing With a Failure to Appear on the Federal Offense [or a Failure to Appear on a Felony During Probation or Parole Status].*** Where the underlying offense behavior can be established (preponderance of the evidence), calculate the guidelines for the underlying offense and add the applicable failure to appear guidelines.

> Example: A 30 year old first offender (non-opiate dependent) robs a bank, and fails to appear for trial on this charge for seven days or more. Grade as [Category Five (original offense); SFS=10; GL range = 24-36 months] + [6-12 months for failure to appear] = [combined GL range of 30-48 months].

Note: If there is a new offense while in failure to appear status, treat as a multiple separate offense plus failure to appear [example: robbery + failure to appear + 2 robberies (while in failure to appear status) is treated as 3 robberies + failure to appear].

4. *Other*.

> Example: A prisoner steals a car while on furlough from a CTC, is not discovered, and is later released on parole. After release on parole, the releasee steals another car. Grade under the multiple separate offense procedure and recalculate the salient factor score. The rescission and reparole guidelines are not stacked to each other.

2.20-09. *Unwarranted Codefendant Disparity*. 'Unwarranted codefendant disparity' refers to different parole decisions for similarly situated offenders where no legitimate reasons for the difference in decisions exists. It is to be remembered that different decisions for codefendants are not necessarily inappropriate.

> Example 1: Two codefendants appear equally culpable in the current offense. However, codefendant A is a first offender (SFS=9); codefendant B has a long prior record (SFS=3). Different decisions based on risk are appropriate and do not constitute unwarranted disparity.

> Example 2: Two codefendants have similar salient factor scores but one is significantly more culpable than the other in regards to the current offense. A more severe decision for the more culpable defendant is appropriate and does not constitute unwarranted disparity.

> Example 3: Two codefendants appear equally culpable in the current offense and have similar salient factor scores; codefendant A shows superior program achievement while in prison; codefendant B has numerous disciplinary infractions. Different decisions based upon institutional behavior are appropriate and do not constitute unwarranted disparity.

> Example 4: Three codefendants are similar in all respects except one develops a serious medical condition. Earlier release for a valid medical reason is appropriate and does not create unwarranted disparity.

> Example 5: Codefendant A pleads guilty; codefendant B who is more culpable avoids prosecution by fleeing the jurisdiction; codefendant C who is most culpable is acquitted after a trial. The fact that more culpable codefendants may have avoided prosecution or conviction does not make appropriate unwarranted leniency on the part of the Commission regarding codefendant A. The decision for codefendant A is to be made pursuant to applicable Commission standards.

Example 6: Codefendant A receives a 5 year sentence, codefendant B receives a 2 year sentence, and codefendant C is placed on probation. The reason for the differences in sentences is not clear. The guideline range for all cases is 24-36 months. That one or more codefendants may have received unwarranted leniency by court action (resulting in a mandatory release date below the applicable guideline range or no imprisonment at all) does not warrant compounding such action by unwarranted leniency on the part of the Commission regarding codefendant A. The decision for codefendant A is to be made pursuant to applicable Commission standards.

Example 7: Three codefendants appear equally culpable, have similar salient factor scores, have identical sentences, and appear to have no other relevant differences. Significantly different decisions by the Commission in such cases constitute unwarranted disparity and are to be avoided. Note: if it appears that the Commission has erroneously granted unwarranted leniency to one codefendant, it is not appropriate to compound such error by providing unwarranted leniency to other codefendant cases.

■ §2.21 REPAROLE CONSIDERATION GUIDELINES.

(a)(1) If revocation is based upon administrative violation(s) only, grade the behavior as if a Category One offense under §2.20.

(2) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(b) The guidelines for parole consideration specified at 28 C.F.R. §2.20 shall then be applied with the salient factor score recalculated. The conviction and commitment from which the offender was released shall be counted as a prior conviction and commitment.

(c) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by Sections 2.47(e) and 2.52(c) and (d).

(d) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant.

Notes and Procedures

■ 2.21-01. *Administrative Violations.* The Commission has a range of sanctions available for dealing with administrative parole violations: reprimand, special conditions (e.g., a CTC placement), and revocation. The Commission preference is to use reimprisonment as a last resort, i.e., when other sanctions have been unsuccessfully tried or are plainly inappropriate. Note: Where there are administrative violations and new criminal conduct, the new criminal conduct controls. Do not consider administrative violations under the multiple separate offense procedure.

■ 2.21-02. *Miscellaneous Offenses.* Common offenses involving parole violators that are graded as Category One (under §2.20 Chapter Twelve) include driving while intoxicated/while under the influence/while impaired, and possession of weapons other than firearms (e.g., possession of a switchblade knife).

■ 2.21-03. *Possession of a Weapon by a Parolee.* Possession of a firearm by a parolee will usually constitute new criminal conduct (the Federal Gun Control Act of 1968 generally prohibits persons convicted of felonies from possessing firearms, although there are certain limited exceptions: for example, this Act does not apply to persons adjudicated under the Federal Juvenile Delinquency Act). However, there may be cases in which possession of a weapon does not constitute new criminal conduct but is still a violation of the conditions of parole (e.g., possession of weapons other than firearms). For such cases, the administrative violation category of the reparole guidelines will apply.

■ 2.21-04. *Escape by Parolee from State Custody.* Occasionally, a prisoner will be paroled to a state sentence and will subsequently escape. For guideline purposes, apply the rescission guidelines (28 C.F.R. §2.36) as if the escape had been from a federal sentence.

■ §2.22 COMMUNICATION WITH THE COMMISSION.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate office setting forth the nature of the information to be discussed.

Such interview may be conducted by a Commissioner or assigned staff and a written summary of each such interview shall be prepared and placed in the prisoner's file.

Notes and Procedures

■ 2.22-01. *Review and Referral of Correspondence.* Correspondence from prisoners or their relatives, friends or others is reviewed by an analyst and a reply, if appropriate, is made to the writer by the analyst. If the content of the correspondence is deemed of sufficient importance to warrant referral to the Regional Commissioner for possible initiation of Commission action, the analyst will do so. Referrals will be made at the discretion of the analyst.

■ 2.22-02. *Correspondence from Member of Congress and Other High Officials.* (a) All correspondence from a Member of Congress, a Federal Judge or other high government official regarding a prisoner is responded to by letter bearing the signature of the Regional Commissioner, except as noted in (b) and (c) below. When copies of the correspondence are sent to the Central Office and one or more Regional Offices, the office receiving the original will answer. Copies of responses to all congressional correspondence tagged by the Office of Legislative Affairs shall be forwarded (two copies) to the Chairman's Office.

(b) In cases currently before the National Appeals Board or National Commissioners, any such correspondence shall be referred to the Chairman of the National Appeals Board for response.

(c) In cases which have been designated as original jurisdiction, responses to congressional inquiries will be prepared by the Chairman's office. The regional office will forward the file and correspondence to the Chairman's office, and will send an interim response advising the writer that the correspondence has been received and forwarded to the Chairman's office for response.

■ 2.22-03. *Congressional Correspondence/Privacy Act.*

(a) Members of Congress either directly or through their staff personnel frequently request information concerning inmates or persons on supervision who are their constituents. The requests should be responded to within one week of receipt and the response signed by the Chairman, Vice Chairman, or the appropriate Commissioner.

(b) The usual request is in the form of a letter from the inmate/parolee to the Congressman or Senator, which is forwarded to the Commission by a covering letter or "buck slip." These may be responded to without obtaining a waiver or form signed by the inmate. (The inmate's letter to the Congressman will be accepted as a waiver.) Include whatever information is appropriate for the response but do not disclose any information which you would not disclose to the inmate/parolee himself if he had made a request under the Privacy Act. Occasionally, a congressional letter is received which does not contain a letter from the inmate/parolee, but specifically advises that this subject has consented disclosure of information to the Congressman or has written to the Congressman requesting assistance. Honor such requests in the same manner as enclosing the inmate/parolee's letter.

(c) Some congressional requests will contain correspondence from family or friends, not the inmate/parolee, will mention an inmate/parolee's name without specifying the source of the request and then ask for information. If the writer does not desire any other than what is contained on the BP-5 plus the action taken in a case (as the result of a hearing or review on the record), comply and furnish this information. However, please note that the disclosure of the action taken does not include disclosure of reasons for that decision. If information which is protected by the Privacy Act is requested, advise the Congressman's Office that detailed information cannot be furnished unless the inmate/parolee provides some written authority waiving his right to privacy; and state that a copy of this letter has been forwarded to the inmate/parolee along with a waiver form and instructions advising him to sign and return the form directly to the Commission if he desires to have such information released.

(d) Some Congressmen request that responses go directly to the inmate/parolee with a copy to the Congressman's Office; these requests are to be honored.

■ 2.22-04. *Requirement for Written Record of Telephone Calls.* The general content of all telephone calls made or received relative to a prisoner is to be made a part of the written record and signed by the Commissioner or staff person who participated in the call.

■ 2.22-05. *Personal Visits.* Visits to a Regional or Headquarters Office are summarized for the file in all cases. All personal visits will be made upon written requests where possible and will be handled by the appropriate analyst. "Walk in" visits will be referred initially to the post or pre-release analyst. No examiner will grant a personal interview to a visitor regarding a prisoner unless authorized by a Commissioner.

■ 2.22-06. *Visits of Federal Prisoners to Commission Offices.* The Commission's Regional Offices and its Headquarters Office shall not discuss a case with a Federal prisoner except at a duly scheduled hearing. Parolees or mandatory releasees who come to the Commission's offices shall be informed that they must instead contact their probation officer. Persons in the community under the legal custody of the Bureau of Prisons shall be informed that they must instead contact their caseworker.

2.22-07. *Contacts at Institutions.* Examiners should be careful not to be swayed in their deliberations by comments by any institution official, unless such comments are substantiated by data in the prisoner's file or made during the course of the hearing with the prisoner present. Persons making gratuitous comments to the examiners should be invited to present their thoughts in writing and make them a part of the record. Examiners should not engage in conversation outside the hearing room concerning any prisoner with any member of the public, attorney, or relative of an inmate who might be in the vicinity of an institution or who might attempt to influence an examiner at any place or at any time.

2.22-08. *Contacts Outside of Routine Channels.* From time to time, Commissioners are contacted by acquaintances and former colleagues in the criminal justice field about particular parole cases that were not within their jurisdiction at the time. In such circumstances, each Commissioner should ascertain first what case has prompted the call, and in whose jurisdiction the case properly lies. If the case is *not* within the contacted Commissioner's jurisdiction, the caller should be advised to write to the appropriate Commissioner, whether it would be a Regional Commissioner, the Chairman of the National Appeals Board (if the case is on national appeal), or the Chairman of the Commission (if the matter involves a complaint about the general policy or practice of the Commission).

2.22-09. *Personal and Financial Relationships of a Potentially Compromising Nature.* Unless specifically authorized by the Chairman or the appropriate Regional Commissioner, all Commission employees must refrain from any on-going personal, social, financial, or business relationship with a current Federal inmate or parolee, regardless of whether or not the employee is in a position to influence an official decision concerning that inmate or parolee, unless such relationship can be justified as merely coincident to the employee's participation in some organized activity of a professional or charitable nature. Any deliberate attempt by a Federal inmate or parolee to contact or socialize with a Commission employee off-duty, which is not part of such an activity, must be firmly rejected and promptly reported to the employee's supervisor.

2.22-10. *Deputy Designated Agency Ethics Official (DDAEO).* Employees are encouraged to call the Commission's DDAEO in the General Counsel's Office for advice concerning any ethics-related problem, whether actual or potential. Supervisors are required to keep the DDAEO advised of any ethics-related problems which could result in adverse personnel action. Employees considering any post-employment activity in the field of criminal justice which involves representation before agencies or courts are requested to consult with the DDAEO to ensure that the provisions of 18 U.S.C. §207 and §2.61(c)(1) of the Commission's rules are understood.

§2.23 DELEGATION TO HEARING EXAMINERS.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Hearings shall be conducted by a panel of two hearing examiners, except where specifically provided that a hearing may be conducted by a single hearing examiner or other official designated by the Regional Commissioner.

(b) The concurrence of two examiners shall be required for a panel recommendation. If a hearing is conducted by a single examiner (or other official), the case shall be reviewed on the record by an additional examiner or examiners for the required vote or votes.

(c) A panel recommendation requires two concurring examiner votes. In the event an examiner panel cannot agree upon a recommendation, the Regional Administrator shall vote. If the Regional Administrator does not concur with either member of the panel, the case shall be referred to any available hearing examiner for a further vote until a recommendation is reached. If the Regional Administrator is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under this paragraph will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision only upon the Regional Commissioner's approval, and docketing at the regional office.

Notes and Procedures

2.23-01. *Documentation of Decisions and Decision Modification.*
(a) To facilitate a consistent national policy, examiners shall briefly indicate in the evaluation section of the hearing summary the factors pointing to placement of a decision at the bottom, middle, or top of the guidelines. This requirement is separate from the requirement that any recommendation outside the guidelines (either above or below) be explained with specificity on the Notice of Action Worksheet.

(b) This need for specificity is present at all levels of decision review (e.g., review of panel recommendations by the Regional Commissioner; or National Appeals). Therefore, the Regional Commissioner, National Commissioners, and National Appeals Board, as applicable, shall record the specific factors in the case file indicating any modification of a panel recommendation or previous Commission action.

§2.24 REVIEW OF PANEL RECOMMENDATION BY THE REGIONAL COMMISSIONER.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On his own motion, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel;

(3) Return the case to the institution for a rehearing, provided that a Notice of Action is sent to the prisoner specifying the purpose of the rehearing;

(4) Designate the case for the original jurisdiction of the Commission pursuant to §2.17.

■ 2.24-01. *Review of Panel Recommendation.*
(a) Each panel recommendation will be reviewed by the Regional Administrator. A recommendation consists of two concurring examiner votes. If the panel renders a split decision, the Regional Administrator will cast a vote. If this still does not result in a recommendation, the case will be circulated among the other examiners present until a recommendation is reached prior to referral to the Regional Commissioner.

(b) For initial and reconsideration hearings, an attempt should be made, where feasible, to ascertain the parole action taken relative to any codefendants .

(c) Each case shall then be reviewed by the Regional Commissioner who shall either accept the recommendation of the hearing examiner panel or take one of the other actions specified in 28 C.F.R. §2.24(a) or (b).

■ 2.24-02. *Permissible Actions under §2.24(b)(1).*
(a) When the Regional Commissioner does not concur in a recommendation of an examiner panel to render a decision outside the Commission's guidelines, he may modify or reverse the decision to bring the date closer to or to the nearest limit of the guidelines. In such case he should specify on the Order that he is acting pursuant to §2.24(b)(1).

(b) Hearing panel errors of a non-judgmental nature (e.g., clerical errors in guideline calculation; errors in guideline assessment that are clearly contrary to written Commission policy) may also be corrected under this section. That is, this section may be used to bring a panel decision that is outside the guidelines closer to or to the nearer edge of the guideline range as calculated by the examiner panel; or as corrected by the Commissioner when the panel has made a judgmental error. The file shall clearly reflect the nature and date of the correction. Such errors shall be called to the attention of the examiner panel. Judgmental errors in establishing the correct guideline range, for example errors in findings on disputed circumstances of the offense or salient factor score items, are to be handled under 28 C.F.R. §2.24(a) or (b)(2) as applicable. If it is unclear whether an error in a given case is judgmental or non-judgmental, it should be treated as judgmental.

■ 2.24-03. *Permissible Actions under §2.24(b)(2).* A Regional Commissioner may amend any recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel. In such case he should specify on the order that he is acting pursuant to §2.24(b)(2). ***NOTES***: (1) A Regional Commissioner may not use this provision to change a fifteen year continuance to an effective or presumptive parole date; (2) In any case in which a decision outside the guidelines results, specific reasons must be provided.

■ 2.24-04. *Permissible Actions under §2.24(a).* In lieu of the above, a Regional Commissioner may refer any panel recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for reconsideration and any action they may deem appropriate under the following procedures.

(a) The Regional Commissioner referring the case indicates on the next available space of the hearing panel order: *"Refer to the National Commissioners for Reconsideration"* and signs this order. The Regional Commissioner then prepares a memorandum (with reasons in case of parole denial) to the National Commissioners with his reasons for this referral. Also, he prepares a second proposed order with his vote and attaches this order to the memorandum. NOTE: In revocation cases, the referral to NAB shall clearly indicate which of the orders is being referred. The NAB will send out all Notices of Action including those finalized in the Regional Office.

(b) A Notice of Action indicating *"Referred to the National Commissioners for Reconsideration of the Hearing Panel's Recommendation"* is prepared; the order is docketed on the Special Docket. This notice is to be sent to the inmate within twenty-one (21) days after the institutional hearing before the panel.

(c) The case is then sent to the National Commissioners. After action by the National Commissioners, the decision is docketed by the National Appeals Board docket clerk. A Notice of Action is then prepared and transmitted to the institution with a copy to the Regional Office. The case is coded and then returned to the Regional Office.

(d) Upon return to the Regional Office, the new order is recorded on the Regional Special Docket.

■ 2.24-05. *Permissible Actions under §2.24(b)(3).* In the event new information has been received between the time of the hearing and review by the Regional Commissioner or if the Regional Commissioner requires a clarification of an issue of fact which is crucial to the decision to be made, the Regional Commissioner may order a new hearing on the next available docket pursuant to 28 C.F.R. §2.24(b)(3), giving notice of the purpose of the hearing to the prisoner and sending the new information (if any) to the institution for timely disclosure. This subsection shall not apply when there is a difference of opinion as to the interpretation of known facts; such differences must be handled under 28 C.F.R. §2.24(a) or (b).

■ 2.24-06. *Modification of Reasons/Correction of Errors.* The Regional Commissioner may add to, modify, or correct any of the reasons for parole denial. The Regional Commissioner may also, on his own motion, correct hearing panel errors (e.g., mathematical error in computing the release date; parole given prior to the judicially set minimum sentence). For errors which affect the guideline range, subsection 2.24-02 above controls. Correction of such error should be indicated in the file together with the initials of the person making the correction and the date of the correction.

■ 2.24-07. *Processing After Decision by Regional Office.*
(a) *Notice of Action.* The decision is recorded on a Commission Regional Docket sheet and the case coded. A Notice of Action is prepared (or proofread for accuracy if prepared at the institution) and distributed as follows. The file copy is attached to the hearing summary for placement in the file. One copy (FOIA copy) is forwarded to the Central Office - Attn: Attorney/Management Analyst - for FOIA purposes (in initial hearing cases, a copy of the salient factor score is attached), and the remaining copies are sent to the institution.

(b) *Non-Appealable Decisions.* When the decision being rendered is "not appealable", the "Right to Appeal" section on the Notice of Action should be crossed through and the Notice marked 'Non-Appealable'. If parole was granted at the date of parole eligibility, the following wording should be added at the end of the "Reasons" section: *"The above date is the earliest date on which parole can be granted on your current sentence. As the Commission is precluded by law from releasing you at an earlier time, this release date is NON-APPEALABLE".* NOTE: If parole on the record use the wording at 2.12-03.

2.24-08. *Statement of Notification Under 28 C.F.R. §2.24.* Whenever the decision recommended by the examiner panel is modified under 28 C.F.R. §2.24, the Notice of Action should reflect the subsection of 2.24 under which the decision has been changed.

2.24-09. *Notice of Action Worksheet.* The handwritten copy of the Notice of Action Worksheet computed by a hearing panel will be retained in the regional case file.

2.24-10. *State Cases.* After docketing/coding, the Notice of Action is transmitted with the Appeal form, the guidelines used, salient factor score, and a form letter to the State Institution explaining parole procedures and appeal rights.

2.24-11. *Notification of Warden or Superintendent.* Notification of any action of the Commission relative to a grant or a denial of parole, shall not be made to anyone except the prisoner until the Warden or Superintendent of the institution where the inmate is confined has been notified in writing (by Notice of Action). In exceptional cases, the Warden or Superintendent may be notified by telephone or telegram.

2.24-12. *Notification of Attorney in Revocation Cases.* The attorney of record in revocation cases shall receive a copy of the Notice of Action. Copies of all Notices of Action on revocation appeal shall also be sent to the attorney so long as he continues to represent the prisoner before the Commission.

2.24-13. *Notification of Victim/Witness.* Any victim/witness (verified through the Bureau of Prisons Victim/Witness Coordinator) or criminal justice system official, upon request, may be notified in writing by the Commission of the final decision of the Regional Commissioner (or the National Commissioners) and any subsequent change in the release date by the Commission (e.g., on appeal, at statutory interim hearing). The notification may, where the Commission deems appropriate, include the specific reasons for the decision (e.g., a copy of the Notice of Action or a summary thereof).

§2.25 [REMOVED]

§2.26 APPEAL TO NATIONAL APPEALS BOARD.

(a) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to §2.17 shall be pursuant to §2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. No exhibits are to be attached to an administrative appeal unless the documents therein contain new information and materials not already in the possession of the Commission. Any submitted exhibits which are copies of materials already in the Commission's files will not be retained by the Commission.

(b) The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman; and, if necessary, to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) The National Appeals Board shall act within sixty days of receipt of the appellant's papers, to affirm, modify, or reverse the decision. Decisions of the National Appeals Board shall be final.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

- **(i) Severity rating;**
- **(ii) Salient factor score;**
- **(iii) Time in custody;**

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

Notes and Procedures

■ 2.26-01. *Date of Entry*. "Date of entry" of decision refers to the date stamped on the Notice of Action.

■ 2.26-02. *Processing through Regional Office*. An appeal to the National Appeals Board must be sent through the Commission's Regional Office. The prisoner will be notified by Form H-28 that the appeal has been received and is being processed. The case folder and appeal will be transmitted to the National Appeals Board.

■ 2.26-03. *Voting Quorum*. Decisions shall be based upon the concurrence of two votes, except any reversal or modification in which the resulting decision is below the guideline range established by the decision under review (including any modification from a decision already below the guidelines) shall require the concurrence of three votes.

■ 2.26-04. *Processing after Decision*. After voting by the National Appeals Board members, the case will be docketed and a Notice of Action prepared. The National Appeals Board decision becomes official upon docketing.

■ 2.26-05. *Favorable New Information*. When significant new information is submitted as part of an appeal, the National Appeals Board may (a) act upon such new information, or (b) affirm the decision and notify the Regional Commissioner of the existence of such information by memo for possible reopening.

■ 2.26-06. *Reasons for Reopening.* In the event the National Appeals Board reopens a case for a new hearing, such decisions shall be accompanied by the memorandum indicating to the examiners the reasons for this action, including any special instructions. A copy of the memorandum should be sent to the institution for its file. Such memo shall be prepared for possible disclosure as specified in Section 2.28-01(b).

■ 2.26-07. *Cases Previously Considered Under 28 C.F.R. §2.24.* The fact that a National Commissioner has voted on a case referred under 28 C.F.R. §2.24 (administrative review) shall not disqualify such Commissioner from voting on the same case later on an appeal under 28 C.F.R. §2.26 or §2.27.

■ 2.26-08. *Prohibition of More Adverse Decision.* No appeal by a prisoner shall result in a more adverse decision, except where there is discovery of new adverse information while the appeal is pending. In such case, the National Appeals Board may, under the provisions and quorum of 28 C.F.R. §2.28(f), remand for a new hearing [see also §2.55(f)]. In any other case, where the National Appeals Board believes that a prisoner has received an inappropriately lenient decision, it may affirm the order and note its opinion as part of the reasons for denial of the appeal.

■ 2.26-09. *Privacy Act/FOIA Requests.* A prisoner's request for copies of file material under the Privacy Act or Freedom of Information Act does not extend the time limit for filing or processing an appeal.

■ 2.26-10. *Late Appeals.* Since appeals are not date-stamped in the institution, any appeal received within 45 days of the date on the Notice of Action will be accepted. After that date, 'late' appeals may be accepted for good cause in the discretion of the National Appeals Board.

■ 2.26-11. *Non-Appealable Actions.*
(1) The following Commission actions are not appealable:

(i) Decisions to grant an effective or presumptive parole date upon completion of the minimum sentence;

(ii) Decisions not to reopen a case under §2.28(a);

(iii) Decisions to reopen a case and schedule a new hearing under §2.28;

(iv) Decisions to retard parole under §2.28(e), or decisions to retard parole under §2.34(a);

(v) Decisions to approve, advance or retard an effective parole date following a pre-release review under §2.14(b);

(vi) Decisions to designate a case as original jurisdiction under §2.17;

(vii) Decisions to deny termination of supervision prior to five years on parole;

(viii) Decisions to let a detainer stand or schedule a dispositional revocation hearing under §2.47.

(2) Decisions which are non-appealable are to be marked "NON-APPEALABLE" on the Notice of Action.

(3) Once a case is officially reopened, the prisoner may appeal the final decision [except as listed in (1) above] whether or not the previous decision is actually changed. For example, a case is reopened for a new hearing because of new information of substantial significance favorable to the prisoner. There is no appeal from the preliminary decision to reopen and schedule a hearing. However, the prisoner may appeal any decision resulting from the hearing on the basis that the new information warranted more weight than was given to it.

(4) In retroactive applications of guideline revision, the determination as to whether or not the prisoner is eligible for retroactive review is not appealable. However, if the prisoner is found to be eligible under the terms announced at the time of the guideline revision, any decision resulting from that finding (whether the previous decision is changed or not) is appealable.

§2.27 APPEAL OF ORIGINAL JURISDICTION CASES.

(a) Cases decided under the procedure specified in §2.17 may be appealed within thirty days of the date of the decision on a form provided for this purpose. Appeals will be reviewed at the next regularly scheduled meeting of the Commission provided they are received thirty days in advance of such meeting. Appeals received in the office of the Commission's National Appeals Board in Washington, D.C., less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting thereafter. A quorum of six Commissioners shall be required and decisions shall be by majority vote. In the case of a tie vote, the previous decision shall stand. This appellate decision shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Appeals and all supporting material are to be submitted thirty days in advance of the meeting at which the appeal will be considered.

(c) If no appeal is filed within thirty days of the entry of the decision under §2.17 that decision shall stand as the final decision of the Commission.

Notes and Procedures

2.27-01. *Processing.* The case file is forwarded to the National Appeals Board Analyst upon receipt of the appeal for preparation of case material which is sent to the Commissioners prior to the appeal consideration by the Commission.

§2.28 REOPENING OF CASES.

(a) Favorable information. Notwithstanding the appeal procedures of §2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner. The Regional Commissioner may then order a new institutional hearing on the next docket, or reverse or modify the decision. The following actions require the concurrence of two out of three Commissioners:

(1) Any modification resulting in a reduction of more than 180 days (other than a modification that brings a decision from above the appropriate guideline range closer to, or to, the nearer limit of the appropriate guideline range);

(2) Any modification resulting in a decision below the appropriate guideline range;

(3) Reversal of a decision (i.e., any modification of a fifteen-year reconsideration hearing decision to a presumptive or effective parole date).

Decisions requiring a second or additional vote shall be referred to the National Commissioners under the procedures of 28 C.F.R. §2.24(a). Original Jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of §2.17.

(b) Institutional misconduct. Consideration of disciplinary infractions and allegations of new criminal conduct occurring after the setting of a parole date are subject to the provisions of §2.14 (in the case of a prisoner with a presumptive date) and §2.34 (in the case of a prisoner with an effective date of parole).

(c) Additional sentences. If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to consider the additional sentence and reevaluate the case. Such action shall void the previous presumptive or effective release date. However, a new initial hearing is not mandatory where the Commission has previously evaluated the new criminal behavior, which led to the additional federal sentence, at a rescission hearing under 28 C.F.R. §2.34; except where the new sentence extends the mandatory release date for a prisoner previously continued to the expiration of his sentence.

(d) Conviction after revocation. Upon receipt of information subsequent to the revocation hearing that a prisoner whose parole has been revoked has sustained a new conviction for conduct while on parole, the Regional Commissioner may reopen the case pursuant to §2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider forfeiture of time spent on parole and such further action as may be appropriate. The entry of a new order shall void any presumptive or effective release date previously established.

(e) Release planning. When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may on his own motion reconsider any case prior to release and may reopen and advance or retard an effective parole date for purposes of release planning. Retardation without a hearing may not exceed 120 days.

(f) New adverse information. Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, a Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of three out of five votes, and the hearing shall be conducted in accordance with the procedures set forth in §2.12 and §2.13. The entry of a new order following such hearing shall void the previously established release date.

Notes and Procedures

■ 2.28-01. *In General.*
(a) The appropriate Regional Commissioner may on his own motion reopen a case at any time upon receipt of new information of substantial significance that falls within one of the categories specified at 28 C.F.R. 2.28. However, the Regional

Commissioner shall not reopen any case during the time it is being considered by the National Commissioners or the National Appeals Board. If the new information is unrelated to the appeal, the Regional Commissioner shall retain the information for possible reopening the case after the appeal process is completed. If the information relates to the appeal, it shall be referred to the National Appeals Board for their consideration.

(b) When a Regional Commissioner reopens a case for any reason, he must specify the applicable subsection of 2.28 and give a brief description of the new information following the "remarks" section on the Notice of Action form. If more explanation is needed, a memo is to be placed with copies attached to the Notice of Action. It is essential that the examiner panel be provided with sufficient guidance so that the subsequent hearing can be properly conducted as intended. The memo must be written in such a manner that it may be disclosed to the prisoner.

█ 2.28-02. *Basis for Reopening.* The six possible bases for reopening are as follows:

(a) *Favorable Information.*
(1) The requirement for "new information of substantial significance" is identical to the "clearly exceptional" standard of 28 C.F.R. 2.14 (a)(2)(ii). The term "favorable information" also includes information that an error adverse to the prisoner was made in the processing of the case.

(2) This section may also be used if an existing sentence is modified or reduced. If the sentence modification is based on new facts concerning the offense, it may be necessary to recompute the guidelines. However, a sentence modification that is not based on new information of substantial significance would not justify a reopening. Institution staff should notify the Regional Commissioner of every instance of a change in sentence structure, and the Commissioner should advise the institution by memo if no reopening is warranted.

(3) *Definition.* The phrase "any modification resulting in a decision below the appropriate guideline range" includes modification of a decision from within or above the guidelines to below the guidelines as well as any modification of a decision below the guidelines to further below the guidelines.

(4) Original Jurisdiction cases may be reopened under 28 C.F.R. §2.28(a) upon the motion of the appropriate Regional Commissioner. In such case, the Regional Commissioner may refer the case directly to the National Commissioners, or may order an institutional hearing prior to the referral to the National Commissioners. A decision of a Regional Commissioner not to reopen an original jurisdiction case does not require any additional vote.

(b) *Institutional Misconduct.* Reopening for this reason is covered in 28 C.F.R. §2.14 and §2.34.

(c) *Additional Sentences.*
(1) Rescission guidelines are applied if the additional criminal conduct occurred while in federal custody or escape therefrom.

(2) An additional concurrent or consecutive federal sentence following initial hearing requires a reopening for a new initial hearing. Exception: where the new sentence results from criminal conduct occurring while in the custody of the Bureau of Prisons (including escape and offenses committed while on escape) for which the prisoner has already been sanctioned by the Commission through the rescission process, the case should be reviewed on the record and: (A) if the record review

indicates that a more adverse decision may be warranted, reopen the case and schedule a new hearing. (This will most likely occur where the previous decision was to "continue to expiration", and there is a new mandatory release date as a result of the new sentence; (B) if the record review indicates that the prisoner has already been sufficiently sanctioned, let the previous decision stand; (C) if the record review indicates that the additional sentence will result in a more adverse decision than the Commission intended, a reduction may be considered. [e.g., if the prisoner has received a new regular adult sentence of less than one year to be served consecutively to a YCA term (thus not aggregable and not under the jurisdiction of the Commission), the "new information" that the prisoner will now have to serve additional 'flat time' may be used to reduce a previously set date where appropriate.] In such case, a reduction of the previous rescission decision may be made on the record following the procedures of 28 C.F.R. 2.28(a).

(d) *Conviction After Revocation*. A reopening under this subsection may be ordered as long as the prisoner remains under the jurisdiction of the Commission. If the prisoner has been rereleased but is still under the Commission's supervision, a summons or warrant may be issued to secure the prisoner's attendance at this hearing.

(e) *Release Planning*. When reopening and retarding under this subsection, indicate on the Notice of Action the reason (e.g., "lack of suitable employment", etc.). *Note:* In the rare case where retardation of a parole grant for release planning by a total of more than 120 days becomes unavoidable, the Regional Commissioner shall schedule a "special hearing" on the next available docket (see 28 C.F.R. 2.28 (e)). The purpose of this hearing shall be to explore what steps can be taken to facilitate development of an acceptable release plan. Following such hearing, the Regional Commissioner may, if necessary, retard the parole date *"until an acceptable release plan is developed."* The Regional Commissioner shall personally review the record of each such case at least once every thirty days thereafter.

(f) *New Adverse Information*. In the case of new adverse information, a special reconsideration hearing may be ordered under this subsection upon the concurring votes of three out of five Commissioners. When the request for reopening under this subsection is sent from the region to the National Commissioners for concurring votes the entire file shall be sent for review. Notice should be sent to the prisoner that his parole date has been automatically retarded pending possible reopening for new information. If the case fails to obtain the necessary concurring signatures, the previous date should be reinstated; or, if the previous date has already passed, a new date set for release as soon as practicable. If the case does obtain the concurring signatures necessary for reopening for a new hearing, the Notice of Action to this effect must specify the adverse nature of the new information and the documentary material must be sent promptly to the institution. The case worker should be contacted to ensure that upon delivery of such material the prisoner will be afforded the opportunity for pre-hearing disclosure. This subsection is the appropriate mechanism for reopening cases to consider new information about the prisoner's original offense behavior or earlier criminal activities that would have resulted in a different decision had the information been presented to the Commission at the time of the initial parole hearing. The entry of a new decision automatically voids the previous decision.

(g) The term "new and significant adverse information" includes (1) documentary or other evidence not contained in the Commission's file at the time the decision in question was made which, taken together with all the other case information, supports the change of a finding or conclusion as to a guideline determinant or as to placement of a decision within or without the guidelines; and (2) discovery of an objectively definable (i.e., definable in terms of Commission rules or procedures) error in a previous decision that affected the determination of the guideline range applicable to the prisoner.

2.28-03. *Hearing Type/Procedure.* Each time a case is reopened under 28 C.F.R. 2.28, the hearing type will be a "special reconsideration hearing," except when a new initial hearing is ordered in the case of additional sentences.

§2.29 RELEASE ON PAROLE.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

Notes and Procedures

2.29-01. *Processing Parole Grants.*
(a) Institution staff shall be requested to submit completed release plans and a request for a certificate of parole to the Regional Office not later than 30 days prior to the effective parole date, when feasible. When this deadline is not met the pre-release analyst shall contact the institution to ascertain the status of the case and reasons for delay.

(b) The parole certificate shall be signed by the Regional Commissioner or by a professional staff member designated by the Regional Commissioner and be dispatched to arrive at the institution not later than five working days prior to the release date. If such certificate does not arrive by this date the institution should request instructions (preferably by teletype or electronic mail). In emergency situations, the Commission may authorize (generally by electronic mail) the institution case manager or administrative systems manager to execute a "temporary parole certificate" on behalf of the Commission. The institution staff should make the request normally via electronic mail. The regional office staff will issue, if deemed appropriate, via electronic mail a "temporary parole certificate" which the inmate will sign. The signature will be witnessed by the institution Warden. Photocopies should be returned to the Commission's regional office and the USPO advising him that a regular parole certificate will follow.

(c) To assist the Probation Service in case classification for purposes of supervision guidelines, the Commission will add the most recently calculated salient factor score category to the parole certificate using the following wording: "Initial Risk Category: (Very Good, Good, Fair, Poor)". For mandatory release cases, the Bureau will add this data to mandatory release certificate.

(d) Release on parole should occur on the effective date shown on the Notice of Action providing the Commission has approved the release plan except as noted in (e) below. The institution should promptly advise the Commission of impending or actual delays (preferably by teletype). In emergency situations (such as disciplinary infractions immediately prior to a release date or a sudden change in release plans), the Bureau of Prisons may delay release on parole until further instructions are received from the Commission. In such case the reasons for the delay and institutional recommendation must be communicated to the Commission immediately; and the Commission shall respond within 5 working days. Further retardation shall be by order of the Regional Commissioner under 28 C.F.R. 2.28.

(e) In the event a prisoner granted a parole date refuses to sign the parole certificate the case worker will inform the prisoner that this action is considered by the Commission to be a refusal of the parole date. If the prisoner still refuses to sign the certificate, the prisoner will not be released. The case worker will notify the Commission's Regional Office by memo that the prisoner has refused to sign the parole certificate after being advised that such refusal constitutes a waiver of parole. The memo will be added to the prisoner's file and the previous order marked *"Cancelled by Refusal to Sign Parole Certificate Per Memo From [ ] Dated [ ]."* For further consideration, the prisoner must again apply for parole. NOTE: These waiver provisions do not affect the release of a mandatory releasee who must be released by expiration of sentence, less good time credits. However, the caseworker should notify a mandatory releasee who refuses to sign the release certificate that the conditions of release are still binding regardless of whether or not the release certificate is signed. The caseworker must sign an attestation on the certificate that the conditions were read to the prisoner prior to release.

■ 2.29-02. *Special Parole Conditions.* See 28 C.F.R. §2.40.

■ §2.30 FALSE INFORMATION OR NEW CRIMINAL CONDUCT; DISCOVERY AFTER RELEASE.

If evidence comes to the attention of the Commission after a prisoner's release that such prisoner has willfully provided false information or misrepresented information deemed significant to his application for parole, or has engaged in any criminal conduct during the current sentence prior to the delivery of the parole certificate, the Regional Commissioner may reopen the case pursuant to the procedures of §2.28(f) and order the prisoner summoned or retaken for hearing pursuant to the procedures of §2.49 and §2.50, as applicable, to determine whether the order of parole should be cancelled.

Notes and Procedures

■ 2.30-01. *Hearing Procedure.* Hearings under this section will be conducted under revocation procedures, except there can be no forfeiture of street time. If a finding of new criminal conduct is made, the following order may be rendered *"Previous order of parole effective [ ] is hereby cancelled."* Then, the rescission guidelines are to be applied, and a new order relative to parole grant or denial is to be entered.

■ 2.30-02. *Warrant Issuance.* Since there can be no forfeiture of street time under this provision, any warrant issued under this provision must state that it is not to be executed after the expiration of the original sentence.

■ §2.31 PAROLE TO DETAINERS; STATEMENT OF POLICY.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in §2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

■ §2.32 PAROLE TO LOCAL OR IMMIGRATION DETAINERS.

(a) When a state or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) Parole to the actual physical custody of the detaining authorities only. In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) Parole to the actual physical custody of the detaining authorities or an approved plan. In this event, release is to be effected to the community if detaining officials withdraw the detainer or make no effort to assume custody of the prisoner, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal Immigration officials, the Commission shall order the following: Parole to the actual physical custody of the immigration authorities or an approved plan. In this event, release is to be effected regardless of whether immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

■ §2.33 RELEASE PLANS.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan.

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an advisor who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

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Notes and Procedures

2.33-01. *Place of Release.* Release plans are developed through the cooperative effort of the Bureau of Prisons and Probation Service staff. In the event of a disagreement as to the most appropriate district of supervision for a person released on parole or as if on parole, the Regional Commissioner shall resolve the disagreement (Note: the Regional Commissioner's authority to determine the location of supervision derives from the Commission's statutory duty to determine the conditions of supervision).

§2.34 RESCISSION OF PAROLE.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by a Disciplinary Hearing Officer or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a Community Treatment Center or a state or local halfway house.

(b) Upon the ordering of a rescission hearing under this section, the prisoner shall be afforded written notice specifying the information to be considered at the hearing. The notice shall further state that the purpose of the hearing will be to decide whether rescission of the parole date is warranted based on the charges listed on the notice, and shall advise the prisoner of the procedural rights described below.

(c) A hearing before a disciplinary hearing officer resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

(d) In the case of allegations of new criminal conduct committed prior to delivery of the parole certificate, the Commission may consider documentary evidence and/or written testimony presented by the prisoner, arresting authorities, or other persons.

(e) The prisoner may be represented at a rescission hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement following the discussion of the charges with the prisoner, and to provide such additional information as the examiner panel may require. However, the presiding hearing examiner may limit or exclude any irrelevant or repetitious statement.

(f) The evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner upon request, subject to the exemptions set forth at §2.55. If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

■ 2.34-01. *In General.* Rescission or retardation of a previously established parole date are sanctions employed by the Parole Commission to assist the Bureau of Prisons in the maintenance of institutional discipline. These sanctions also uphold the integrity of the condition that release on the established date is contingent upon the prisoner's continued good conduct. Neither rescission nor retardation of parole can be ordered for disciplinary reasons unless the Bureau of Prisons has first conducted an Institutional Disciplinary Committee Hearing. (New criminal conduct, whether in an institution or in the community, is the sole exception and is discussed in 2.34- 07 below.) The purpose of a rescission hearing is to permit the prisoner to explain his misconduct and to permit the Parole Commission to reach an independent judgment as to the seriousness of the misconduct. However, an I.D.C. finding will in each case be considered conclusive that an infraction of the specified prison rule did occur.

■ 2.34-02. *Presumptive Parole Cases.* In cases where a presumptive date of parole has been set, I.D.C. reports will be considered at the prisoner's next interim hearing or the pre-release record review, whichever comes first. However, institution staff will give the Regional Office advance copies of I.D.C. reports whenever rescission of parole is recommended. In such cases, the Regional Commissioner may schedule a special rescission hearing.

(a) *Interim Hearings.* Progress reports must be prepared at least 30 days before the hearing or the pre-release review and will contain the following notice:

> *"IF YOU HAVE A PRESUMPTIVE PAROLE DATE, any I.D.C. actions referred to in this report will be considered by the Commission as a basis for possible rescission of your parole date. You may present documentary evidence (including voluntary statements of witnesses) in mitigation of your misconduct. You may also be represented at the hearing by a person of your choice, and may request to review all disclosable documents that will be considered by the Commission."*

The complete I.D.C. file (BP-IS-115 and all supporting documents) will be made available to the examiner panel, and a copy of the file will be retained following the hearing for Regional Office consideration. (Pre-hearing disclosure of these documents is discussed in 2.34-06 below.) Interim hearings will be conducted pursuant to the procedures set forth at 28 C.F.R. §2.34(c)-(f), whenever the Progress Report includes I.D.C. actions.

(b) *Pre-release Record Reviews.* If the progress report prepared for a pre-release record review includes I.D.C. actions, the I.D.C. report and supporting documents will be attached to the report. The Regional Commissioner's options are then to order a rescission hearing as discussed below, retard parole without a hearing for up to 90 days, or make the presumptive date an effective date if no adverse action is warranted. Specific notice of that decision will be sent by the Commission's Regional Office.

■ 2.34-03. *Effective Parole Cases.* The institution will immediately notify the regional office of any misconduct by a prisoner with an effective parole date. A copy of the I.D.C. report and all supporting documents shall accompany this notice, unless the prisoner is so close to the release date that parole must be retarded on emergency notice. (Supporting documents must then be sent as soon as possible.) If the misconduct is not serious enough to warrant a rescission hearing or retardation of parole, the Regional Office must promptly notify the institution that there will be no change in the previous order.

(a) *Rescission Hearings.* If the misconduct warrants a rescission hearing, the Regional Commissioner may reopen the case and retard parole for a rescission hearing on the next available docket. The hearing shall be in accordance with the procedures specified at 28 C.F.R. §2.34(c)-(f). The examiner panel will be provided with a copy of the complete I.D.C. file.

(b) *Legal Certification.* Whenever a rescission hearing is to be ordered in an effective date case, and such rescission hearing would be based upon an IDC conducted by a contract CTC, the IDC report must be referred to BOP Regional Counsel for certification as legally valid prior to the holding of the rescission hearing. If it is not feasible to certify the IDC report before the hearing, certification may be obtained after the rescission hearing. IDC reports based on proceedings conducted in facilities other than contract CTC's will not require certification, except that in any questionable case the Regional Commissioner may refer the IDC report for BOP legal certification before proceeding with the rescission hearing.

(c) *Retardation Without a Hearing.* Under 28 C.F.R. §2.34, a Regional Commissioner may retard a parole date for up to 90 days without a hearing for disciplinary infraction(s). If subsequent to an order to retard a parole date under this provision, the Regional Commissioner becomes aware of additional I.D.C. disciplinary infraction(s) which warrant further retardation of the parole grant, a rescission hearing shall be scheduled if the total retardation warranted exceeds 90 days from the original parole date. An exception is when the additional retardation ordered still results in a parole date preceding the arrival of the next regularly scheduled hearing panel at such institution; in such cases, this limited additional retardation may be ordered without a hearing.

2.34-04. *Notice of Action Formats.*

(a) *Examples.*

Example (1) If a rescission hearing is ordered and will be conducted prior to the scheduled release date, the Notice of Action will read:

Reopen: [*schedule for a rescission hearing on next docket*]
Reasons: *You were found guilty of* [*specified misconduct*] *by I.D.C. report dated* [ ].

Example (2) If a rescission hearing is ordered but will not be conducted prior to the scheduled release date, the Notice of Action will read:

Reopen: [*retard parole and schedule for a rescission hearing on the next docket*]
Reasons: *You were found guilty of* [*specified misconduct*] *by I.D.C. report dated* [ ].

Example (3) If parole is retarded for up to 90 days without a hearing, the Notice of Action will read:

Reopen: [*retard parole for specified number of days*]
Reasons: *You were found guilty of* [*specified misconduct*] *by I.D.C. report dated* [ ].

Provide guideline data if the retardation exceeds the guidelines.

(b) *Notice of Procedural Rights in Effective Parole Cases.* Each Notice of Action reopening for a rescission hearing will include the following notice of procedural rights attached to the Inmate Copy of the Notice of Action:

"The purpose of a rescission hearing ordered by the Parole Commission is to decide whether a deferral of your parole date is warranted based on the charges listed on the attached Notice of Action. At your hearing, you may present documentary evidence (including voluntary statements of witnesses) in mitigation of your misconduct. You may also be represented at your hearing by person of your choice, and may request your case manager to permit you to review all disclosable documents that will be considered by the Commission."

■ 2.34-05. *Original Jurisdiction Cases.* A Regional Commissioner may refer a vote to take no action on an I.D.C. report or to retard parole up to 90 days under the procedures of 28 C.F.R. §2.17 or may take action on his own motion. If a rescission hearing is ordered, the decision following such hearing must be handled under 28 C.F.R. §2.17 if the case was previously handled under original jurisdiction procedures.

■ 2.34-06. *Disclosure of Documents.* Normal pre-hearing disclosure procedures will apply to the I.D.C. file (BP-IS-115 and all supporting documents). If the case manager objects to disclosure of any documents or portion thereof to the prisoner on the grounds of potential harm to any person, the document will be clearly marked DO NOT DISCLOSE and the I.D.C. report will serve as the legally-required summary of withheld document(s). Examiners must exercise care not to reveal the contents of any non-disclosable document.

■ 2.34-07. *New Criminal Behavior by a Prisoner.*
(a) The occasion may arise where a prisoner is alleged to have committed a new crime (e.g., while on pass from a C.T.C.) and no I.D.C. is conducted. In such a case, the prisoner will be scheduled for a rescission hearing upon return to an institution. The Regional Office should ensure that specific notice of the charges is given in the Notice of Action reopening the case, and that the same type of documentary evidence that would be available at an institutional revocation hearing (e.g., arrest reports, etc.) is sent to the institution prior to the rescission hearing. Where appropriate, the U.S. Probation Office may be requested to interview the witnesses and obtain statements.

(b) While the prisoner may not call adverse witnesses at the hearing, the truth of the charges may be contested and the prisoner may present written statements on his behalf. In the event such a hearing is ordered, the case manager is to be contacted and requested to make sure the prisoner is advised of the above procedural rights.

■ 2.34-08. *Escape Cases.* When a prisoner with a parole date is returned to an institution following an escape, a rescission hearing is not to be conducted until the institution first completes the necessary I.D.C. action.

■ 2.34-09. *Rescission Guidelines.* Every decision to rescind parole, and every decision to retard parole without a hearing, must be made pursuant to the guidelines set forth at 28 C.F.R. 2.36.

■ §2.35 MANDATORY RELEASE IN THE ABSENCE OF PAROLE.

(a) A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms

for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

(b) It is the Commission's interpretation of the statutory scheme for parole and good time that the only function of good time credits is to determine the point in a prisoner's sentence when, in the absence of parole, the prisoner is to be conditionally released on supervision, as described in subsection (a). Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release.

(c) A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

■ §2.36 RESCISSION GUIDELINES.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) ADMINISTRATIVE RULE INFRACTION(S) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct, or by 0-8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) ESCAPE/NEW CRIMINAL BEHAVIOR IN A PRISON FACILITY (including a Community Treatment Center). The time required pursuant to the guidelines set forth in (i) and (ii) below shall be added to the time required by the original presumptive or effective date.

(i) Underline: Escape or Attempted Escape

(A) Escape or attempted escape, except as listed below	8-16 months
(B) If from non-secure custody with voluntary return in 6 days or less	<=6 months
(C) If by fear or force applied to person(s), grade under (ii) but not less than Category Five.	

Notes: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(3) Voluntary return is defined as returning voluntarily to the facility or voluntarily turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest on other charges).

(4) Non-secure custody refers to custody with no significant physical restraint [e.g., walkaway from a work detail outside the security perimeter of an institution; failure to return to any institution from a pass or unescorted furlough; or escape by stealth from an institution with no physical perimeter barrier (usually a camp or community treatment center)].

(ii) Other New Criminal Behavior in a Prison Facility

Severity Rating of the New Criminal Behavior (from §2.20)	Guideline Range
Category One	<=8 months
Category Two	<=10 months
Category Three	12-16 months
Category Four	20-26 months
Category Five	36-48 months
Category Six	52-64 months
Category Seven	64-92 months
Category Eight	120 + months

Note: Grade unlawful possession of a firearm or explosives in a prison facility, other than a community treatment center, as Category Six. Grade unlawful possession of a firearm in a community treatment center as Category Four. Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., knife) in a prison facility or community treatment center as Category Three.

(3) NEW CRIMINAL BEHAVIOR IN THE COMMUNITY (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to reparole violators under §2.21 shall be applied, using the new offense severity (from §2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

Note: Offenses committed in a prison or in a Community Treatment Center that are not limited to the confines of the prison or Community Treatment Center (e.g., mail fraud of a victim outside the prison) are graded as new criminal behavior in the community.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

■ 2.36-01. *Administrative Infractions.* If a decision is rendered following a rescission hearing to defer release above the guideline range for administrative rule infractions, the Notice of Action must state that a decision above the guideline range is found warranted and specify the reasons therefor. Note: Multiple instances of drug abuse are considered as separate violations only when separated by an intervening disciplinary report.

■ 2.36-02. *Escape/New Criminal Behavior Within a Prison Facility or Within a Community Treatment Center.*
(a) *Escape or Attempted Escape Without Force or Threat.* The Notice of Action must indicate the appropriate guideline range to be added to the time required by the original presumptive or effective date, and if a decision is rendered outside the guideline range, state with specificity the factors warranting such a decision.

(b) *Other New Criminal Behavior Committed Within a Prison Facility or Within a Community Treatment Center.* New criminal conduct within the confines of a prison facility (or within a CTC) shall be assessed pursuant to the guidelines set forth in §2.36(a)(ii). Note: Offenses not limited to the confines of a prison facility or CTC (e.g., submitting false tax returns to the IRS from a prison facility) are graded as new criminal behavior in the community. The Notice of Action must indicate the new offense severity and guideline range as well as the Commission's decision with regard to the number of months to be served for such behavior in addition to the time required by the original presumptive or effective date.

(c) *Escape by Fear or Force.* Grade as 'Other New Criminal Behavior in a Prison Facility', but not less than Category Five. Example: A prisoner escapes from an institution work detail by overpowering the correctional officer escorting the detail. The officer does not sustain bodily injury. Grade as Category Five (i.e., add 36-48 months). This sanction is in place of, not in addition to, the sanction for escape without force.

(d) *Minor Assaults.* Certain assaults may be rather minor (e.g., shoving, throwing non-dangerous objects), or, in some cases it may not be possible to establish which offender is the aggressor (e.g., where two prisoners are found fighting). In cases of minor assaults such as described above, grade as an administrative violation. Examples: (1) During an argument, a prisoner shoves and verbally abuses another prisoner; (2) Two prisoners are found fighting, but it cannot be established which prisoner was the aggressor; (3) A prisoner throws urine at a correctional officer from a cell while in disciplinary segregation.

■ 2.36-03. *New Criminal Behavior in the Community (e.g., While on Pass from a Community Treatment Center, or on Furlough, Work Release, or Escape).* Apply the reparole guidelines under §2.21(b). Recalculate the salient factor score as if the prisoner had been on parole at the time of the new criminal behavior. If other criminal behavior is committed during an escape or while on escape status, add the time to be served for the escape or attempted escape to the time that is assessed for the other new criminal conduct. The Notice of Action must indicate the new salient factor score, the appropriate offense severity rating, and the guideline range, as well as the Commission's decision with regard to the release date. [Note: New criminal conduct includes a new misdemeanor or felony. Minor offenses (e.g., traffic infractions, or disorderly conduct), and possession of a small quantity of drugs for the prisoner's own use, shall be treated as administrative infractions under 2.36-01 above.]

2.36-04. *Technical Escapes.* A prisoner on pass or furlough who fails to return to Bureau custody within the required time frame solely because of a new arrest is not considered an escapee for rescission guideline purposes. However, a prisoner who fails to return at the required time and is later prevented from returning by a new arrest is treated as an escapee (without voluntary return).

§2.37 DISCLOSURE OF INFORMATION CONCERNING PAROLEES; STATEMENT OF POLICY.

(a) Information concerning a parolee under the Commission's supervision may be disclosed to a person or persons who may be exposed to harm through contact with that particular parolee if such disclosure is deemed to be reasonably necessary to give notice that such danger exists.

(b) Information concerning parolees may be released by a Chief U.S. Probation Officer to a law enforcement agency (1) as deemed appropriate for the protection of the public or the enforcement of the conditions of parole or (2) pursuant to a request under 18 U.S.C. §4203(e).

Notes and Procedures

2.37-01. *Disclosure of Information.*
(a) Authority for discretionary release of information under §2.37(a) is delegated to the Chief Probation Officer of the District supervising the case (in the absence of a special instruction from the Commission to the contrary). Determinations under this section shall be made under the standards established by the Administrative Office of the U.S. Courts for similar determinations for probationers, subject to any special instructions of the Commission. Any questions concerning the necessity of such disclosure may be referred to the Regional Commissioner for decision.

(b) §2.37(b) is intended to facilitate cooperation between the Parole Commission and law enforcement officials. It refers to disclosure on a case by case basis of such information as is necessary to assist a law enforcement agency in the investigation of a specific crime (for example, notification to a law enforcement agency by a probation officer that a parolee has in the past used a modus operandi similar to one reportedly used in a recent crime); and disclosure of such information as is necessary to assist in parole supervision (for example, asking law enforcement officials whether a parolee has been questioned or has had other contacts with the law enforcement agency, or asking assistance in locating a parolee whose whereabouts are unknown). Authority for such disclosure, absent a special instruction from the Commission to the contrary, is delegated to the Chief Probation Officer of the District supervising the case. Determinations to disclose case file information shall be made under the standards established by the Administrative Office of the U.S. Courts for similar determinations for probationers, subject to any special instructions of the Commission. Any questions concerning disclosure under this section shall be referred to the Regional Commissioner for decision.

(c) In addition §2.37 provides for the routine disclosure of certain information about parolees to law enforcement authorities pursuant to 18 U.S.C. §4203(e). When requested by the head of a law enforcement agency of a state or local government, the Chief Probation Officer of the applicable district shall provide with respect to parolees who reside, are employed, or are supervised within such agency's geographical jurisdiction the following information (to the extent that it is maintained by the Probation Office): (1) the names of such parolees, (2) their addresses, (3) their dates of birth, (4) their F.B.I. numbers, (5) their fingerprints and photographs, and (6) the nature of the offense of conviction and the factual circumstances relating to it.

Notes:
(1) The term "parolee" includes persons released as if on parole (mandatory releasees).
(2) Provisions for routine disclosure do not apply to WITSEC cases.
(3) Any law enforcement agency receiving information under paragraph (c) above shall be notified that such information is for law enforcement purposes only and is not to be released outside such agency.
(4) Disclosure of information concerning persons sentenced under the Juvenile Justice Act is governed by the following. When a juvenile delinquent is released, the post release analyst should ask the Probation Officer supervising the case to request authorization from the committing court to disclose information concerning the juvenile (a) to person(s) who may be exposed to harm through contact with that juvenile if such disclosure is deemed to be reasonably necessary to give notice that such danger exists, and (b) to a law enforcement agency where disclosure of information is required for protection of the public or enforcement of the conditions of parole. A copy of this authorization should be sent to the Commission for its file. If such authorization is granted by the committing court, disclosures may then be made as appropriate. For any disclosure consideration not covered above, contact the Commission's Legal Office.

§2.38 COMMUNITY SUPERVISION BY UNITED STATES PROBATION OFFICERS.

(a) Pursuant to sections 3655 and 4203(b)(4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to persons released by parole or as if on parole (mandatory release) under the Commission's jurisdiction.

(b) A parolee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

Notes and Procedures

2.38-01. *Supervision Guidelines.* The Commission, in conjunction with the U.S. Probation Service, has established parole supervision guidelines (see Appendix 5). Special supervision on a highly selective basis for the first six months may be ordered. This order will be placed on the Notice of Action in the following form: "Special Supervision Required for the first six months".

2.38-02. *Supervision Reports.* All parolees and mandatory releasees shall make monthly written reports (Probation Form 8) to the United States Probation Officer to whom they have been assigned, and such written reports shall be submitted regularly on a monthly basis regardless of level of supervision under the parole supervision guidelines.

2.38-03. ***Warrant Execution and Searches by Probation Officers.*** Probation Officers are not authorized by the Commission to execute warrants or to make searches of releasee's person or premises. An exception concerning limited physical examination for detection of drug abuse is covered under 28 C.F.R. 2.40-13.

2.38-04. ***Supervision of HIV-Positive Parolees.*** In the case of a parolee who has been identified as infected with the Human Immunodeficiency Virus (HIV), the probation officer for the district of supervision shall take the following steps:

(a) Evaluate the parolee immediately upon release to develop a case plan with education, counseling, and (where appropriate) treatment components.

(b) Explain to the parolee the methods of HIV transmission and the measures for preventing such transmission.

(c) Instruct the parolee that it is important for him to make disclosure of his HIV infection to prospective sex partners and other persons in danger of becoming infected by him. Inform the parolee that he may be subject to civil or criminal liability for transmission of HIV to another person.

(d) In a manner consistent with state confidentiality laws, refer the parolee (1) to resources for medical treatment and (2) to state or local health departments, self-help agencies or other community organizations and networks who provide counseling to persons with AIDS or AIDS-related conditions.

(e) To the extent permitted by state law, notify the appropriate state or local health department that the parolee is HIV-positive.

(f) If the probation officer is aware of any specific person who is exposed to a medically recognized type of risk of infection from the parolee and believes that such person has not been notified of such risk, consult with the parolee's physician; health care provider; and, if necessary, with the state or local health authorities to determine if they are able and willing to provide a third party warning to such person.

(g) If such a warning is not prohibited by state law and if the parolee's physician, health care provider, and state and local health authorities are unable or unwilling to make such a warning, make a discreet and confidential warning of the parolee's condition to the person at risk and advise that person of one or more health professionals or organizations who can provide counseling.

(h) If a violator warrant is issued, notify the United States Marshal that the parolee is HIV-positive.

§2.39 JURISDICTION OF THE COMMISSION.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by Section 2.35, Section 2.43, or Section 2.52.

(b) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(c) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

Notes and Procedures

2.39-01. *Notice of Discharge.* In the absence of early termination of supervision, the probation officer, on behalf of the Commission, shall issue a Notice of Discharge to the parolee at the expiration of his term. When a Special Parole Term follows a regular parole term such Notice shall be issued by the probation officer only at the completion of the Special Parole Term. When a Commission warrant has been issued, no Notice of Discharge shall be given until a final disposition of the warrant has been made.

■ §2.40 CONDITIONS OF RELEASE.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificates issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole advisor, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole advisor or his probation officer or his office, he shall communicate with the United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer, at other times as the probation officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or his office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not possess a firearm or other dangerous weapon.

(12) The parolee shall permit confiscation by his Probation Officer of any materials which the Probation Officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle, or on his person.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the U. S. Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of §4251(a), or a drug dependent person within the meaning of §2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by §4255 for all or part of the period of parole.

(e) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this section may be imposed only as an alternative to incarceration.

(f) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(g) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (f) of this section.

(h) A parolee may appeal an order to impose or modify parole conditions under §2.26 not later than thirty days after the effective date of such conditions.

(i) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. To be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C. §4161 and §4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

(j) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of the warrant, whether before or after the original expiration date, may be charged as a basis for revocation, and a warrant may be supplemented at any time.

(k) A parolee or mandatory releasee who is released after December 31, 1988, and who is found by the Commission, after a revocation hearing conducted pursuant to these rules, to have been in possession of a controlled substance while on parole, shall have his or her parole revoked.

Notes and Procedures

■ 2.40-01. *CTC Residence.* As a condition of parole, residence in a Community Treatment Center may be required. Such residence in a community treatment center shall not generally exceed 120 days.

■ 2.40-02. *Release on Condition of Participation in Drug or Alcoholic Treatment Program.* Government privacy regulations restrict information flow between treatment facilities, the Commission, and Probation Officers in the absence of the consent of the person being treated. They allow for a blanket consent at the outset of treatment (42 C.F.R. Part 2, §2.29) and a blanket consent form has been prepared for that purpose and is to be signed by the prisoner before release. Refusal to sign this consent form will be treated in the same way as a refusal to sign the certificate of parole.

■ 2.40-03. *Drug After-Care Condition.*
(a) Each parolee and mandatory releasee committed under the Narcotic Addict Rehabilitation Act [or others who have been determined to be dependent or addicted to drugs and committed under the Drug Abuse Prevention and Control Act (DAPCA, 21 U.S.C. §841)] shall have the special drug condition imposed unless there are compelling reasons to the contrary. This condition is: *"You shall participate, as instructed, in a program approved by the U. S. Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing to determine if you have reverted to the use of drugs."* All such releasees are eligible for drug after-care services. The United States Probation Officer is responsible as the Commission's agent, and will work closely with community agencies or persons who may be under contract to the Federal Government to provide specialized after-care service.

(b) Where a special drug after-care (or alcohol or mental treatment) condition is to be placed on a Parole, Mandatory Release or Special Parole Term Certificate, this condition should be added to the Order, and Notice of Action. This also applies to cases released to detaining authorities. In such cases, the parole certificate will inform the U.S. Probation Officer that the after-care condition should be put into effect when the prisoner begins active supervision.

(c) The U.S.P.O. may, after analysis and study of a case, determine that a drug aftercare condition is no longer necessary. In such cases, he may recommend to the Regional Commissioner that this condition be deleted.

■ 2.40-04. *Mental Health After-Care.* When a prisoner appears to be in need of treatment in the community for a serious mental or emotional problem, the Commission may impose a special condition requiring such treatment. In such cases, the Commission may order parole on the condition that the parolee participate in a program of mental health under the direction of his probation officer. Such program may consist of in-patient or out-patient care as indicated upon or after release.

■ 2.40-05. *Use of Parolees and Mandatory Releasees as Informants.*
(a) *Introduction*. Because of the high risk of recidivism involved with exposure to a criminal environment, the Commission's general policy, as expressed as conditions of release, is that a parolee or mandatory releasee [hereinafter *releasee*] under

the jurisdiction of the U.S. Parole Commission shall not associate with persons engaged in criminal activity nor work as an informant for a law enforcement agency. In this context, an informant is defined as an individual who associates with persons with criminal records or who are engaged in criminal activity for the purpose of furnishing information to, or acting as an undercover agent for, a law enforcement agency on a confidential basis. Under its authority to modify the conditions of release, the Commission may grant an exception and permit a releasee to serve as an informant in an exceptional case (e.g., where such service would likely result in the conviction of a major criminal or where the security of the nation is involved).

(b) *Selection*. (1) When a releasee offers to cooperate with a law enforcement agency and the agency concerned wishes to utilize the services of the releasee, the agency director (or their officially assigned designee) will contact the Regional Parole Commissioner of the region in which the releasee is under supervision at least (except where emergency circumstances dictate otherwise) thirty (30) days prior to the proposed use of the releasee. NOTE: Since the Commission will not consider such requests without input from the appropriate U.S. Probation Office, the agency should forward requests through the appropriate Chief U.S. Probation Officer, who will, in turn, forward the request, along with his office's observations, opinions and recommendations, to the Commission. Included therein will be the determination by the appropriate Probation Officer that the releasee is offering his services of his own free will.

(2) As part of the request to utilize the services of the releasee, the agency will furnish in writing an overview of the proposed utilization. Such overview will contain the agency's operating instructions to the releasee, the agency's *proposed* administrative controls, and an evaluation of the risk to the subject and plans to combat such risk. Such overview also will state why the potential benefit to the government outweighs the risk of the releasee's reinvolvement with criminal associates. Request for consideration for the use of a releasee's services will specify the period of time (up to ninety (90) days) for which the services of the releasee are desired. [See Appendix 7, Item A: Information Provided].

(3) As part of the selection process, an agency representative is to conduct an in-depth briefing with the releasee concerning his relationship with the agency, the intended target, the operating instructions and the conditions imposed by the Parole Commission. The Chief U.S. Probation Officer (or his designee) is designated as the Commission's representative and will arrange for and attend this briefing. At the conclusion of this meeting, a Letter of Agreement will be signed by all three parties and forwarded to the Parole Commission. [See Appendix 7, Item B: Letter of Agreement].

(c) *Conditions and Operating Procedures*. (1) The releasee is not to participate in any otherwise criminal activity. Otherwise criminal activity is defined as activity that would constitute a crime under state or federal laws if engaged in by a private person acting without authority and approval of a law enforcement agency. [NOTE: An exception to this condition may be granted by the Regional Commissioner, but only with the concurrence of the Chairman (or another Commissioner designated by the Chairman)].

(2) The releasee is not to be used in any manner which might jeopardize his safety without prior approval of the United States Parole Commission.

(3) During the period of the releasee's services as an informant, the agency will be responsible for testing and assessing the relationship to ensure that the releasee is not violating his operational instructions or conditions. The agency

will bring any violations promptly to the attention of the Commission. Additionally, any activity that would require a significant change in the operating instructions or conditions of this service will be brought to the immediate attention of the Commission. Approval by the Commission will be required before any change is implemented.

(4) Every thirty (30) days, and at the conclusion of the authorized period, the agency will provide a report, to include, in as much detail as possible, the extent of the releasee's cooperation and effectiveness in the investigation, the status of of the case at that time, and the amount, if any, of financial remuneration or other consideration/reward provided to the releasee.

(d) Approval. (1) The appropriate Regional Commissioner may approve or disapprove such requests pursuant to the guidelines and procedures in this section. Information copies of all requests and final responses will be forwarded to the Chairman. Exception: when such requests involve an original jurisdiction case, the Regional Commissioner shall transmit the request, with his/her recommendation and vote, to the National Commissioners under the procedures of 28 C.F.R. §2.17.

(2) If the Regional Commissioner approves the request, the conditions of the releasee's cooperation will be set forth in a letter, under the signature of the Regional Commissioner, to the requesting law enforcement agency. A copy will also be sent to the appropriate Chief United States Probation Officer.

(3) The releasee's services in this capacity are to be approved for a period not to exceed ninety (90) days, commencing as of the date of the Regional Commissioner's approval. In the event circumstances develop that would indicate that an extension of the specified period of services would be in the best interest of all concerned, the agency will provide a written request for such an extension, to include appropriate justification for the extension. Such request and justification shall be forwarded at least ten (10) days prior to the end of the specified term, unless emergency circumstances dictate otherwise. A copy of this request will also be sent to the appropriate Chief United States Probation Officer.

(e) Termination. At the conclusion of the period of authorization, the U.S. Probation Officer is to advise the releasee that such authorization has been terminated and that he is no longer authorized to act as an informant for the agency.

[NOTE: All correspondence concerning informants must be marked PERSONAL & CONFIDENTIAL, TO BE OPENED BY ADDRESSEE ONLY.]

▌ 2.40-06. *Use of Methadone*. The Commission, in conjunction with the Bureau of Prisons and the Probation Division, has set criteria for a parolee's participation in a methadone maintenance program to control heroin or other opiate addiction. Commission approval is not required where the community care agency and the U.S. Probation Officer jointly agree on the need for such a program and that the case meets the following criteria: the releasee must be at least 18 years old; he must volunteer; abstinence methods must have been ineffective; he must have medical clearance; methadone maintenance is administered only by those agencies that are appropriately certified by the Drug Enforcement Administration and the Federal Drug Administration, and is employed only in conjunction with other appropriate supportive community care and supervision services.

▌ 2.40-07. *Restriction on Use of Alcohol*. The Commission has decided that it will impose no special condition barring the use of alcoholic beverages. The regular conditions prohibit "excessive" use of intoxicants. Where the Commission orders that a releasee participate in some form of after-care for alcoholism, this should be added as a special condition.

2.40-08. *Association with Persons with Criminal Records.*

(a) The U.S. Probation Officer supervising the case shall have authority to grant or deny permission to a parolee or mandatory releasee regarding association with person(s) having a criminal record. A special condition requiring approval by the Regional Commissioner of such association shall supersede this authority. For the purposes of this provision, the term "criminal record" refers to a conviction for a felony or any other offense for which a term of imprisonment exceeding one year was, or could have been, imposed.

(b) Unless it is clear that the parolee or mandatory releasee knows that an associate has a criminal record (e.g., they knew each other while in prison together), a warrant or summons charging a violation of this condition ordinarily should not be issued unless the releasee has first been given a warning by his Probation Officer that the associate in question has a criminal record and that further association would be a violation of the release conditions. As to the condition prohibiting association with persons engaged in criminal activity, there is no need for such a warning before charging a violation of that condition, since prior criminal record is not a factor in that condition.

(c) Where the Commission wishes to prevent a parolee from frequenting an establishment where forbidden associations are suspected, the Commission may impose a special condition that the parolee not visit the specific place in question.

2.40-09. *Modification of Conditions.*

(a) When a United States Probation Officer wishes to propose a special condition, or revision of the existing conditions of supervision, he shall make such proposal on Parole Form F-1. The original of that form shall constitute notice to the releasee of his recommendation. In most instances he should discuss the matter with the releasee and present the notice in person. The notice should be dated at the time it is given to the releasee. Where the releasee agrees to the proposed revision he may so specify on the form and waive the ten day period (to which he is entitled if he wishes to submit comments to the Commission relative to the proposal).

(b) If necessary, the notice may be mailed by certified mail and the 10 day period for comments begins on the date the notice is received by the releasee, as stated on the postal service document showing receipt. This date must be shown on the F-1 form sent to the Commission.

(c) Approval or disapproval of the proposal may be made by the Regional Commissioner at any time after the comments of the releasee are received, but must be made within 21 days, excluding holidays, of such receipt.

(d) The releasee himself may petition the Commission directly by writing a letter or similar communication to the Regional Commissioner. The Commission will normally ask for comments from the probation officer in such instances before approving or disapproving the petition. The Commission is not required to respond within the 21 day period when the parolee petitions for modification of the conditions of his release.

(e) The Regional Commissioner may add to or revise the conditions of release on his own motion, but will permit a ten day period for the releasee to comment in writing and will normally also ask for responses (oral or written) from the probation officer.

(f) Special conditions may be imposed or other modification made as part of a revocation proceeding without regard to notice or any period of time for comments by any party.

(g) A Notice of Action shall be used when modifying a condition of release, and such notice serves to advise the releasee of his rights to appeal the action. A decision not to change a condition previously imposed is not appealable.

■ 2.40-10. *Special Conditions.* Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing panel at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate, special conditions may be added or modified at any time prior to the prisoner's release. After release, conditions may be added or modified pursuant to 28 C.F.R. §2.40(b).

■ 2.40-11. *Appeal of Conditions.* The parolee may also appeal the original imposition of conditions. When an inmate objects to the conditions of release he remains subject to them nonetheless until such time as the Commission might revise them on appeal. The prisoner may obtain an appeal form from his case manager prior to his release if he contemplates filing an appeal. The time limit for appeal expires 30 days after the date of his release from custody.

■ 2.40-12. *Felony Registration and Similar Ordinances.* Certain communities have ordinances which call for registration with the police or other authority of residents who have a record of felony conviction. Other laws may specify that a convicted person may not drive an automobile or be issued certain licenses or that persons with a history of narcotic addiction must register under certain conditions and cannot be issued public licenses. Each probation officer should be familiar with ordinances of this kind in the district and notify persons under supervision of their obligation to comply with such ordinances.

■ 2.40-13. *Physical Examination for Detection of Drug Abuse.*
(a) *Parolees with Special drug aftercare condition.* A probation officer may direct a parolee under the 'special drug aftercare condition' to permit reasonable examination of the parolee's person by the probation officer (or other drug treatment personnel) for the detection of drug abuse (e.g., fresh needle marks). The purpose of this provision is to assist in early detection of certain forms of drug abuse so that proper counseling and treatment can be initiated. This procedure is intended as an additional, supplemental tool, and not as a replacement for urine specimen analysis. In conducting such examinations, the following procedures apply:

(1) Examinations are to be made with due concern for the dignity and privacy of the parolee.

(2) Examinations under this provision should normally be limited to the arms, legs below the knees, head (including nose) and neck. Use of a magnifying glass to facilitate inspection is permitted. Only for good cause in extraordinary circumstances (and with the advance permission of the Regional Commissioner) may any more intrusive inspection be authorized.

(3) Examinations should normally be made by a person of the same sex as the parolee. Where this is not feasible, a person of the same sex as the parolee must be present when such examination is conducted.

(4) Since the primary purpose of the provision is early detection of drug abuse for treatment purposes, revocation consideration will not generally be based solely

on evidence of such examination. Should evidence relating to such examination be submitted by a probation officer as part of any application for revocation consideration, the probation officer shall submit a separate statement citing the relevant experience/training of the person conducting such examination.

(5) Use of force is not authorized. Refusal to submit to a reasonable examination under this provision may be charged as a violation of parole.

(b) *Parolees not under Special drug aftercare condition.* If the probation officer suspects drug abuse, or if pursuant to an established program of random testing, the probation officer may ask the parolee to consent to submission of a urine specimen and/or physical examination under the procedures of paragraph (a) of this section. If the parolee refuses to consent, the Commission is to be notified promptly. The Probation Officer should state the basis of the suspicion of drug abuse and request the Commission to add the following as a special condition of parole: 'You shall submit to testing for detection of drug abuse as directed by your probation officer.' Such request should be via Form F-1 (see 2.40-09).

(c)(1) The Commission's policy is one of "zero tolerance" regarding illegal drug use by parolees. Probation officers shall advise each parolee that even the first such illegal use is subject to and will result in intervention/sanction.

(2) Any instance of illegal drug use by any parolee shall be reported by the probation officer to the Commission. The probation officer shall also report the intervention/sanction imposed by the probation officer for such drug usage and/or the intervention/sanction which the probation officer recommends be imposed by the Commission.

2.40-14. *Seizure of Contraband in Plain View.*

(a) Where specifically authorized as a condition of parole (either at the time of release or as a special condition later added) a Probation Officer may require the parolee to surrender to him materials which the Probation Officer believes may constitute contraband and thus a violation of parole conditions (e.g., dangerous drugs, weapons), and which he observes in plain view in the course of his contacts with the parolee. The Commission shall be promptly notified of any such seizure of contraband. A receipt for any material confiscated must be given to the parolee.

(b) Safety of all parties involved, or in the vicinity, is the prime consideration in the seizure of contraband. Thus, any use of force is prohibited and consent to the confiscation is required. Refusal of consent shall be a basis for a request by the Probation Officer for a warrant.

(c) Where possession of contraband material constitutes a criminal offense, such must be reported to the appropriate law enforcement authority with delivery to them of the contraband. Probation Officers should obtain from the law enforcement authorities in their District instruction in proper identification and chain of custody procedures to permit use of the materials for criminal proceedings and/or revocation of parole.

(d) Contraband materials must be in plain view (open sight). Plain view cannot be the result of a search by the Probation Officer. Thus, the Probation Officer may not conduct a search (e.g., enter rooms uninvited or open bureau drawers, glove boxes, or trunks of cars) to cause 'plain view' of contraband articles.

2.40-15. *Satisfaction of Court Orders [Including the Payment of Fines, Restitution Orders, Court Costs and Assessments, and Court Ordered Child Support or Alimony Payments].* When a parolee is subject to an outstanding fine, restitution order, court costs and assessments, court ordered child support or alimony payment, and is unable to pay the obligation in one sum, the following procedures apply:

(a) The U.S. Probation Officer will meet with the parolee to develop a written plan for the payment of the fine, restitution order, etc. The plan will include, among other things, a payment schedule and the amount to be paid at each installment. It will include also the following clause: "This plan, and the obligations described herein, are part of the conditions of my parole." The parolee will supply all financial information and records necessary to the development of the plan and will sign the plan, along with the U.S. Probation Officer. A copy of the signed plan will be forwarded to the U.S. Parole Commission.

(b) As to the payment schedule and the amounts to be paid at each installment, the plan will include any relevant court ordered installment payment schedule. If no such installment payment schedule exists, one will be developed that takes into account, among other things, the amount of the fine [restitution order, etc.], any interest and penalties due as well as the parolee's employment status, earning ability, financial resources, and the economic burden that the payment of the obligation will impose on the parolee or his dependents. Where feasible, the installment payment term for fines and restitution orders should not exceed two years.

(c) When the parolee has an outstanding restitution order in addition to a fine or other financial obligation, the plan will give precedence to the satisfaction of the restitution order.

(d) If the parolee refuses to accept the terms of the plan in general, refuses to accept the installment payment schedule, and/or refuses to sign the plan, the U.S. Parole Commission will be notified. The U.S. Parole Commission will then resolve any outstanding disputes as to terms and installment payment schedules, completing the plan as necessary and making the terms and schedules contained therein themselves a special parole condition.

(e) Any changes to or modifications of the plan will be reduced to written form and signed by the parolee and the U.S. Probation Officer. A copy of the signed change or modification will be forwarded to the U.S. Parole Commission.

(f) If the parolee does not make diligent effort to make the payments according to the schedule in the plan, the U.S. Probation Officer will report such failure to the U.S. Parole Commission as a violation of the conditions of parole.

■ 2.40-16. *Emergency Placement in CTC.* When it is not practicable to obtain prior approval from the Commission, a United States Probation Officer may, for good cause, place a parolee in a CTC for up to four days, provided the parolee consents in writing to such placement (use Form F-1). The Probation Officer is to notify the Commission by phone or teletype on the next working day, and a written report (including Form F-1) is to be sent to the Commission promptly.

■ 2.40-17. *Possession of Weapons.* There may be exceptional cases in which the Commission might permit an partial waiver of Condition 11 (prohibiting a parolee from possession of a firearm or dangerous weapon). No such permission may be considered, however, where the parolee is otherwise prohibited by federal, state, or local law from such possession.

■ 2.40-18. *Home Detention.* The term "incarceration" includes (1) pre-release placement in a community treatment center by the Bureau of Prisons, (2) post-release placement in a community treatment center by the U.S. Parole Commission, and (3) return to prison of a parole violator. In regards to a pre-release placement, a parole date will normally be advanced for up to six months to permit this condition to be imposed.

The Commission may require parolees to pay costs of home detention, based on their ability to pay, if they consent to the condition on a form provided for that purpose.

■ 2.40-19. *Mandatory Parole Revocation for Possession of Illegal Controlled Substances.* Mandatory revocation does not apply to cases in which there is evidence of only use and the releasee is not found by the Commission to have actually possessed any illegal controlled substances. This provision applies to both parolees and mandatory releasees. If, following a revocation hearing, the Commission finds that a parolee has possessed any controlled substance during that period of parole, the Commission shall enter an order revoking parole as required by law.

■ §2.41 TRAVEL APPROVAL.

(a) The probation officer may approve travel outside the district without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for other travel outside the district, including any travel outside the contiguous forty-eight states, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

Notes and Procedures

■ 2.41-01. *Travel Outside the District Which Requires Approval of the Commission.* In non-original jurisdiction cases, travel decisions under 2.41(b) may be made by an analyst or examiner (where there is concurrence between the analyst or examiner and the probation officer recommendation). Otherwise, such decisions shall be made by the Regional Commissioner. In original jurisdiction cases, the Regional Commissioner may approve or deny such travel on his own motion or may refer the case with his recommendation and vote to the National Commissioners. In such case, the quorum at 28 C.F.R. §2.17 shall be required. Travel as part of transfer to another district does not require Commission approval, but evidence of the completed transfer should be sent to the originating region. Travel outside the contiguous forty-eight states includes travel to or from Alaska, Hawaii, territories, or foreign countries.

■ 2.41-02. *Temporary Surrender of Passport.* The U.S. Probation Officer may require the parolee to surrender his passport for any time up to the duration of parole supervision if the Probation Officer believes that a parolee may take unauthorized trips outside the United States (e.g., a drug offender who is suspected of traveling abroad to arrange new importation ventures). If the parolee refuses to surrender his passport, the Probation Officer may contact the Regional Office and request that a special condition be added. The Regional Commissioner shall determine whether a reasonable basis for the proposed condition appears to exist. (The Probation Officer should, when the passport is surrendered, notify the nearest U.S. passport office so that the parolee cannot obtain a replacement.)

■ 2.41-03. *Probation Officer's Recommendation Relative to Foreign Travel.* Certain foreign countries prohibit entry of convicted felons. It is the responsibility of the Probation Officer, prior to making a favorable recommendation to the Commission to authorize foreign travel, to ascertain that such travel is not contrary to the law of the country being entered.

■ §2.42 PROBATION OFFICER'S REPORTS TO COMMISSION.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee after the completion of 24 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

Notes and Procedures

■ 2.42-01. *In General.* Exclusive authority and responsibility for decisions relating to a grant or denial of application for parole, imposition of reasonable conditions of parole or mandatory release, and modification and revocation of parole have been vested in the U.S. Parole Commission by statute. The U.S. Probation Officer acts as the agent of the Parole Commission in the performance of duties relating to the supervision of a releasee. The probation officer is authorized to exercise only such discretion as has been delegated to him by the Parole Commission in the supervision of releasees.

■ 2.42-02. *Reporting of Violations.* The authority to issue a summons to appear or a warrant for the retaking of a releasee is exercised by the Parole Commission. The following guidelines are established by the U.S. Parole Commission for U.S. Probation Officers' use in reporting alleged violation of parole or mandatory release.

(a) *Law Violations.* The probation officer shall immediately report to the Parole Commission the arrest of a releasee for a new criminal offense which is punishable by any term of imprisonment. Do not wait for conviction or final disposition to report the arrest but submit dispositional information as soon as it becomes available.

(b) *Technical Violations and Lesser Law Violations Not Punishable by Imprisonment (e.g., Traffic Infractions).* The Parole Commission delegates to the probation officer the authority to exercise discretion as to when technical violations or infractions are reported except that all violations shall be reported immediately under the following circumstances:

(1) The releasee fails to report to his parole advisor or the U.S. Probation Officer within 10 days after his release and his whereabouts is unknown.

(2) The releasee leaves the limits fixed by his certificate of parole without the permission of the probation officer and fails to return or contact his probation officer within 15 days, or leaves the continental United States for any period of

time without the permission of the Parole Commission, or violates a special condition of parole regarding travel.

(3) The releasee's whereabouts are unknown for more than 30 days.

(4) The releasee fails to submit written monthly reports for 2 consecutive months even though his whereabouts are known to the probation officer.

(5) The releasee has entered into an agreement to act as an informant or special agent for a law enforcement agency without advanced approval of the Parole Commission.

(6) The releasee has purchased, possessed, or administered a controlled substance under circumstances which lead the probation officer to believe the releasee is abusing controlled substances on an on-going basis or is involved in the distribution of controlled substances. The probation officer must support the alleged violation through personal observation or other evidence if the releasee has not been arrested.

(7) The releasee has continued to associate with persons who have a criminal record after the releasee has been directed specifically by the probation officer to discontinue the association [except that all associations with persons with a criminal record by a releasee classified as an original jurisdiction case by the Commission shall be reported immediately].

(8) The releasee possesses a firearm or other dangerous weapon without the permission of the U.S. Probation Officer and the approval of the Parole Commission.

(9) The releasee violates any special condition of parole or mandatory release.

(c) *Pattern of Violations.* Violations of the conditions of parole or mandatory release shall be reported immediately to the Parole Commission if, in the opinion of the probation officer, the violation behavior is part of a continuing pattern of infractions or is indicative of serious adjustment problems likely to culminate in criminal activities. The written report of violation should contain the probation officer's recommended action (e.g., warrant, summons, reprimand, modification of conditions, etc.).

(d) *Methods of Reporting Violations.* Violations which must be reported immediately will be reported by special report under procedures set forth in this chapter. All violations not reported immediately shall be reported on the Supervision Progress Report (Parole Form F-3).

§2.43 EARLY TERMINATION.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence.

(2) A committed youth offender sentenced to a term of more than one year may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer.

(c)(1) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. §4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner. In calculating such five-year period, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(2) If supervision is not terminated under paragraph (c)(1) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to termination of supervision not less frequently than biennially.

(3) A parolee may appeal an adverse decision under paragraphs (c)(1) or (2) of this section pursuant to §2.26 or §2.27 as applicable.

(d) The Regional Commissioner in the region of supervision shall have authority to make decisions under this section pursuant to the guidelines set forth below; except that in the case of a parolee classified under the provisions of §2.17, an affirmative decision to terminate supervision under paragraph (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made pursuant to the provisions of §2.17.

(e) Early termination guidelines: In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

(i): A parolee originally classified in the very good risk category (pursuant to §2.20) has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and
(ii): A parolee originally classified in other than the very good risk category (pursuant to §2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

Note: As used in this section, an indication of new criminal behavior includes a new arrest if supported by substantial evidence of guilt, even if no conviction or parole revocation results.

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect the public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

(3) Decisions to terminate supervision prior to completion of the three year period specified in paragraph (e)(1)(ii) of this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score as originally calculated. However, termination of supervision prior to the completion of two years of difficulty-free supervision will not be granted unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until disposition of such charge(s) is known.

(5) After five continuous years of supervision, decisions to terminate will be made in accordance with subsection (c) of this rule.

Notes and Procedures

2.43-01. *In General.*
(a) A probation officer shall submit to the appropriate Regional Office of the Commission a report (Parole Form F-3) for every parolee and mandatory releasee after two years of active supervision and annually thereafter, except when the releasee's term will expire within 90 days after the anniversary date of his release to supervision. Any period of confinement in a penal type of institution as a result of another sentence shall not be counted as active supervision. This report shall be prepared and submitted as soon as practicable after the completion of the period of supervision to be covered in the report. The initial report shall cover the first two years of supervision. Subsequent reports shall cover the periods of supervision since the last report. Note: In the case of a parolee who was committed under the Youth Corrections Act with a maximum sentence of six years or more, a terminal report shall, in addition, be submitted to the Commission six months prior to the expiration of the full term, and the case shall be reviewed to determine if early unconditional discharge should be granted to set aside the conviction.

(b) After review of the supervision report, the Regional Commissioner shall determine whether or not supervision (and thus jurisdiction) shall be terminated. A Commission order shall be used to record when termination is ordered and the case shall be docketed on a docket provided for that purpose (Early Termination Docket).

If the parole is not terminated the Regional Commissioner shall write "no change" on the F-3 form and initial such action. No Notice of Action need be sent following any review based on a supervision period of less than five years.

(c) If early termination is ordered, a Certificate of Early Termination shall be issued with a copy to the probation officer. Certificates of Early Termination shall be signed either by the Regional Commissioner or his designee, and the termination shall be effective as of the date it is signed, except that termination in the case of a military parolee will become effective 30 days from the date of signature, with the effective date of termination noted on the H-15 form. NOTE: (i) if the parolee is serving a sentence imposed by a military court, a copy of the Certificate shall be sent to the appropriate Clemency Board (addresses follow); Army Clemency Board, SFCP, c/o OSA Mail Room, Room 1E526, Washington, D.C. 20310; Air Force Clemency and Pardon Board, SAF MIPC, Commonwealth Building, Washington, D.C. 20330; Navy Clemency and Pardon Board (use for Navy and Marine personnel), 801 North Randolph Street, Suite 905, Arlington, Virginia 22203; (ii) if the parolee has been transferred to the United States under a treaty, a copy shall be sent to the Office of International Affairs, Criminal Division, U.S. Department of Justice, Washington, D.C. 20530.

(d) In all cases of early termination, F.B.I. Form R-84 should be completed and sent to: *F.B.I. Identification Division, Washington, D.C. 20537, Attention: Recording Section.* Copies of Certificates of Discharge or Early Termination need not be sent to the F.B.I.

(e) Parolees may petition the Commission directly for termination. In such instances no decision shall be made to terminate parole early without considering a recommendation of the U.S. Probation Officer.

(f) Unless early termination is ordered each releasee will continue to make written monthly reports (Parole Form 8) to the probation officer. Such reports will be submitted regularly until supervision is terminated, despite the fact that the probation officer may classify the releasee under high or low activity supervision status according to the Supervision Guidelines. Reduction of written reporting is not permitted.

(g) After five years under continuous supervision (excluding any time in confinement since the last release from federal custody on the sentence) the Regional Commissioner shall either (1) terminate supervision; or (2) order a personal hearing with the releasee to be held locally by one hearing examiner or other official designated by the Commissioner.

(h) The above hearing will be conducted under the same procedures as revocation hearings in that the releasee is entitled to receive reasonable advance notice of the hearing and that he has the right to have an attorney and witnesses appear in his behalf, and to the cross-examination of adverse witnesses. He also has the right to request a court-appointed attorney, and the probation officer should be instructed to provide Form CJA-22 if such a request is made. The releasee does not have the right to disclosure of file material in the same manner as when a decision to grant or deny parole is being made, but (as in a revocation hearing) should be allowed to see material at the time of the hearing which was added to the file since his release and which may be used by the Commissioner in making his determination relative to termination of supervision. These include any reports from a probation officer to the Commission except material which is exempt under Federal statute from being disclosed.

(i) The purpose of such hearing is to obtain information upon which the Regional Commissioner might determine whether or not there is a likelihood that the parolee will engage in conduct violating any criminal law. A summary (Appendix 1-E) is prepared. No recommendation is given to the releasee by the examiner, nor is concurrence by a second examiner needed. Upon final determination by the Commissioner, a Notice of Action is issued to the releasee, through the probation officer. Such Notice should contain the right of appeal of such actions pursuant to 28 C.F.R. §2.25 and §2.26, since the parolee has completed five years of active supervision. If the Regional Commissioner makes an Order different from the recommendation made by the Hearing Examiner, the reasons for the differing action shall be made a part of the file.

█ 2.43-02. *Original Jurisdiction Cases.*

(a) *Prior to Five Years of Supervision.* Cases designated Original Jurisdiction (OJ), which have been on parole supervision for less than five years, shall be processed as described in 2.43-01. If the Regional Commissioner orders "NO CHANGE" and supervision is continued, no referral to the National Commissioners is necessary. However, if after review of an OJ case, the Regional Commissioner *votes for termination of supervision,* the case *must* be referred to the National Commissioners for termination to be approved. If termination is ordered, the file shall be returned to the Regional Office for processing and certificate preparation.

(b) *Following Five Years of Supervision.*

(1) After five years of supervision, a Regional Commissioner may vote for termination without ordering a termination hearing. In such cases, a referral to the National Commissioners must be made. If a decision is made in favor of termination, the case is returned to the Regional Office for processing and certificate preparation. If the decision is for continued supervision, the National Commissioners will enter an order as follows: "Continue Supervision - Schedule for Termination Hearing".

(2) Following completion of the hearing, the Regional Commissioner will vote and refer the case to the National Commissioners. A Notice of Action to the releasee will be sent by the Regional Office at the same time the case is forwarded to the National Commissioners. This notice will advise the releasee that his case has been referred to the National Commissioners.

(3) After five years of supervision, the Regional Commissioner may order a five year termination hearing and then vote either for termination or continued supervision. In such cases the process will be the same as (b)(2) above after the hearing has been held.

(4) If supervision is continued, the releasee may appeal pursuant to 28 C.F.R. §2.27.

■ 2.43-03. *Special Parole Terms.*

(a) When early termination of a regular parole term is ordered and Special Parole Term is to follow, the probation officer is to be authorized by letter to amend the applicable dates on the Special Parole Term Certificate to show that the Special Parole Term is to begin immediately and that the expiration date is to be moved forward.

(b) Since Special Parole Terms are not aggregated with regular parole terms, a new schedule for submission of Form F-3 must be established at the time a Special Parole Term begins. Such reports are due after each year under supervision after the month in which the Special Parole Term began.

(c) The time to be counted for (1) early termination guidelines and (2) a five-year termination hearing is to be counted from the beginning of the special parole term without credit for time on any regular parole supervision.

■ §2.44 SUMMONS TO APPEAR OR WARRANT FOR RETAKING OF PAROLEE.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) issue a warrant for the apprehension and return of the offender to custody. A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense

and awaiting disposition of the charge, issuance of a summons or warrant may be withheld, a warrant may be issued and held in abeyance, or a warrant may be issued and a detainer may be placed.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. §4164, such summons or warrant may be issued only within the maximum term or terms, less one-hundred eighty days. A summons or warrant shall be considered issued when signed and placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to revocation of parole and forfeiture of time pursuant to §2.52(c).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

Notes and Procedures

2.44-01. *Requests for Warrants.*

(a) Requests for warrants/summons from the probation officer shall not be declined without the approval of the Regional Commissioner. Declinations of warrants on reports of parolee actions without requests for a warrant shall be decided by the analyst unless such report indicates a continuing pattern of behavior or a propensity for violence. In such case, it shall be referred to the Regional Commissioner. The analyst may refer any report to the Regional Commissioner that in his opinion indicates a warrant should be issued.

(b) A warrant declined by the Regional Commissioner needs no further action. Finality of issuing a warrant rests with the Regional Commissioner.

(c) Should a Regional Commissioner be unavailable when it is necessary to make a decision concerning the issuance of a warrant, then the violation warrant material must be directed to another Commissioner for consideration. This procedure is as follows:

(1) The sending region will transmit the information normally contained in a warrant application via teletype, telecopier or telephone to any available Regional Commissioner.

(2) The receiving region will then type the warrant, and the Regional Commissioner of the receiving region will issue or decline the warrant. Following issuance or declination, the sending region will be notified via teletype, telecopier or telephone.

(3) If the warrant is issued, the receiving region will then distribute the warrant by sending the original and one copy of the warrant to the appropriate U.S. Marshal and one copy to the sending region. The sending region will prepare the warrant application and related materials which will be forwarded to the appropriate distribution points.

(d)(1) The following language should be typed on all warrants issued for YCA and NARA releasees "Do not execute or use as a detainer after (full term Date)." ***EXCEPTION:*** If there is evidence that the releasee is in absconder status omit this sentence and substitute: "Subject is in absconder status - execute warrant whenever subject is apprehended." If after the warrant is issued information is received that the releasee is an absconder, notify the Marshal by letter or teletype signed by the Regional Commissioner (1) that the subject is in absconder status - execute warrant whenever subject is apprehended; and (2) instruct the Marshal to draw a line through the sentence "Do not execute after (full term date)" and to attach this letter or teletype to the warrant.

(2) In FJDA cases, the following language should be typed on all warrants "Do not execute or use as a detainer after (date of offender's 21st birthday)." *EXCEPTION:* In the very rare case that the juvenile offender was more than age 19 at time of original commitment, consult Regional Bureau of Prisons staff for the date that federal jurisdiction ends.

(e) Preference for CTC Placement: In the case of administrative violations, a Community Treatment Center or similar placement is generally to be preferred to returning the parolee to prison.

▌2.44-02. *Summons Issuance.*

(a) A summons to appear at a revocation hearing may be issued if, in the opinion of the Regional Commissioner, incarceration pending revocation proceedings is not warranted by the frequency or seriousness of the alleged violation or violations, the parolee is not likely to fail to appear for revocation proceedings, and the parolee does not constitute a danger to himself or others. The summons shall state (on the reverse side) the charges to be considered at the hearing. Summonses may be served by certified mail, return receipt requested, to the parolee by the Regional Office or may be served in person by a U.S. Marshal.

(b) A summons may also be issued to require the appearance of the parolee at a preliminary interview. In such cases, the words "revocation hearing" must be struck from the summons form and "preliminary interview" typed above the stricken words. The preliminary interview will then be conducted as usual, except that if probable cause is found the Regional Commissioner may issue a warrant or a summons to appear at a revocation hearing. Further, if revocation is ordered following the hearing, a warrant must be issued to authorize the marshal to take the alleged violator into custody.

▌2.44-03. *Warrant Application.*

(a) When satisfactory evidence is received indicating that a parolee or mandatory releasee has violated the conditions of his release to the extent that a warrant should be issued and it can be issued timely, a warrant application is prepared. NOTE: A warrant cannot be issued during a special parole term for a violation that occurred during a regular parole term.

(b) Charges on the warrant application should be listed chronologically and separately, beginning with the earliest charge. It is recommended that the warrant application be limited to convictions and to administrative charges if, sustained, indicate a substantial infraction of the conditions of release. However, see 2.44-04(c) ("Public Safety" cases) for an exception to Commission's policy on waiting for convictions.

(c) Specific charges alleging violations should be numbered and should be limited to one distinct statement of violation. Only information that adequately defines and describes the specifics of an alleged violation should be contained in the warrant application.

(d) Convictions previously considered by the Commission but resulting in a sanction less than revocation (e.g., resulting in reinstatement to supervision) shall be included on a later warrant application. Notes: (1) Such previously considered conviction may not be the sole basis for revocation; (2) Such previously considered conviction may not, by itself, be used to deny a preliminary interview or local revocation hearing.

■ 2.44-04. *Warrant Issuance in Criminal Cases/Public Safety Cases.*

(a) A parole violator warrant is normally issued for the purpose of returning a parolee to custody as soon as possible. However, where there is a pending criminal proceeding, execution of the warrant may be delayed pending disposition of local criminal charges, even if the parolee is released on bond. *EXCEPTION:* If the parolee is alleged to have committed a crime of violence, and there appears to be a risk of future violent crime, the warrant should be issued with instructions for the immediate arrest of the parolee as soon as the parolee is released from local custody. (See instructions #1 or #3 on Form H-24, depending on the circumstances.) These cases are to be referred to as "public safety cases." Such instructions would also be appropriate if other factors indicate that the parolee is a particularly poor risk for continued release.

(b) Issuance of warrants in public safety cases must be accomplished with a minimum of delay. The "satisfactory evidence" requirement of 28 C.F.R. §2.44(a) [which is less stringent than the "probable cause" standard of §2.48(a)] would be met by the fact of arrest plus a reasonably specific written or oral report of the circumstances of the alleged crime and the nature of the evidence. If additional evidence will be needed to support a probable cause finding once the parolee is arrested, the probation officer should be instructed to secure that evidence for presentation at the preliminary interview.

(c) Upon receipt of a warrant request in "public safety cases", a decision must be made within 24 hours. A telephone request may be accepted if strictly necessary and the Commission is assured that the probation officer can obtain sufficient evidence of parole violation for the preliminary interview. If the Regional Commissioner is absent, any available Commissioner may be contacted by telephone and the warrant issued pursuant to 2.44-01(d). *As soon as the warrant is signed and placed in the mail, the originating office must send a teletype to the U.S. Marshal and Probation Officer, advising of the warrant issuance and conveying the appropriate instructions.*

(d) In the case of a warrant issued upon a telephone request, the warrant application will list each charge *"per telephone call from U.S. Probation Officer [name] on [date], based upon [e.g., arrest report dated . . . . etc.]"*. The U.S. Probation Officer should be instructed to follow up the telephone request with a written report as soon as possible.

■ 2.44-05. *Criteria for Warrant Issuance.*

(a) A warrant may be issued for violation of any general or special condition of parole.

(b) A warrant should be issued in cases which there is a new criminal conviction (other than for a minor offense), unless the Regional Commissioner finds good cause for non-issuance of the warrant, and states his reasons therefor in writing.

(c) A warrant should be issued when the parolee's continuance on parole is incompatible with the welfare of society or promotes disrespect for the parole system. Specific acts in violation of parole must be stated and documented as to time, place and circumstances of the alleged violation.

(d) A warrant may be issued for "treatment" in the absence of a violation of release conditions in NARA and YCA commitment cases *only* but not in other types of cases.

(e) A warrant should be issued in accordance with the criteria contained herein, and not merely to substitute for local prosecution.

■ 2.44-06. *Mechanics of Alleging a Parole Violation.* A warrant application serves two functions: (1) it advises the releasee of the violation with which he is charged and the evidence for that violation, and (2) it provides (at the preliminary interview and at the revocation hearing) allegations of violation containing simple, accurate, complete statements of fact. Five elements are covered in each warrant application charge. To provide uniformity, these elements are approached in the same sequence for all charges of violation. The mechanics of alleging a violation are set forth below. It should be remembered that drafting a warrant application is one place where a certain amount of repetition achieves clarity. Unless the specific acts are so intertwined that they are supported by identical evidence, they should be separately stated.

1.	When	[on] [on or about] [July 3, 1973] [from on or about July 3, 1973 to on or about September 3, 1973]
2.	Who	[subject] [John J. Jones]
3.	What	[committed a criminal act (burglary) (driving a car without owner's permission)] [left his place of residence] [left his employment] [failed to file monthly reports]
4.	Where	[in Tampa, Florida] [in Municipal Court, Miami, Florida] [in Circuit Court of Jefferson County, Mobile, Alabama]
5.	Evidence: Source and particulars	[According to a statement of his mother, Mrs. Janet Jones dated July 15, 1973] [P.O. Anderson's letter/report dated July 20, 1973] [Police report of July 23, 1973, #6660 by Officer Henry Harris]

■ 2.44-07. *Format.* The charges in the headings on the Warrant Application should be as shown below in quotation marks. (The condition number should *NOT* be used.)

Condition 1 - "FAILURE TO REPORT FOR SUPERVISION"

Condition 2 - "FAILURE TO REPORT FOR SUPERVISION AFTER RELEASE BY DETAINING AUTHORITIES"

Condition 3 - "LEAVING DISTRICT WITHOUT PERMISSION"

Condition 4 - "FAILURE TO REPORT CHANGE IN RESIDENCE"

Condition 5 - (a) "FAILURE TO SUBMIT SUPERVISION REPORT(S)"
  (b) "FALSIFYING SUPERVISION REPORT(S)"
  (c) "FAILURE TO REPORT TO PROBATION OFFICER AS DIRECTED"

Condition 6 - (a) (LIST THE PARTICULAR OFFENSE)
  (b) "ASSOCIATION WITH PERSON(S) ENGAGED IN CRIMINAL ACTIVITY"
  (c) "FAILURE TO REPORT ARREST"

Condition 7 - "ACTING AS ("INFORMER") ("SPECIAL AGENT") FOR A
LAW ENFORCEMENT AGENCY"

Condition 8 - (a) "FAILURE TO WORK REGULARLY"
(b) "FAILURE TO SUPPORT LEGAL DEPENDENTS"
(c) "FAILURE TO REPORT CHANGE IN EMPLOYMENT"

Condition 9 - (a) "EXCESSIVE USE OF ALCOHOLIC BEVERAGES"
(b) "(PURCHASE OF) (POSSESSION OF) (USE OF) (ADMINISTERING OF) (MARIJUANA) (NARCOTIC DRUG) (DANGEROUS OR HABIT-FORMING DRUG) OR (SOLD) (DISPENSED) (USED) (GIVEN AWAY)"

Condition 10 - "ASSOCIATION WITH A PERSON(S) HAVING A CRIMINAL RECORD"

Condition 11 - "UNAUTHORIZED POSSESSION OF FIREARM (OR OTHER DANGEROUS WEAPON)"

Condition 12 - "FAILURE TO RESIDE IN COMMUNITY TREATMENT CENTER"

Condition 13 - "FAILURE TO SATISFY COURT-IMPOSED FINANCIAL OBLIGATIONS"

Special Condition - "VIOLATION OF SPECIAL CONDITION" -- (TO BE NAMED)

■ §2.45 SAME; YOUTH OFFENDERS.

(a) In addition to the issuance of a summons or warrant pursuant to Section 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

■ §2.46 EXECUTION OF WARRANT AND SERVICE OF SUMMONS.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered, shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

Notes and Procedures

2.46-01. *Execution of a Warrant.*
(a) *In General:* When an alleged violator is taken into custody other than on the basis of Commission's warrant, (as a result of new criminal charges being filed or a sentence imposed) the Commission's warrant is not executed until he is released by the other authorities, except by further order of the Regional Commissioner. Where a subsequent federal sentence is imposed, the warrant is returned to the issuing region. If the violator is placed in a federal facility outside the issuing region then the unexecuted warrant and the file is forwarded to the region where the violator is located. The region where the violator and institution are located then places the warrant.

(b) *By U.S. Marshal:* A United States Marshal shall take custody of an alleged violator when so instructed by the Commission. Upon execution of the warrant, the U.S. Marshal delivers a copy of the warrant application to the parolee and also notifies the U.S. Probation Officer and furnishes him with a copy of the warrant application. Therefore the Marshal notifies the Parole Commission in the region where the warrant was issued, and retains custody of the alleged violator until notified of further disposition.

(c) *By Warden:* When an alleged violator receives a new federal sentence prior to revocation by the Commission, the warrant is filed with the institution and placed as a detainer. A copy of the warrant application is given to the alleged violator at this time. When released from the new sentence (or prior thereto, if ordered by the Regional Commissioner as a result of a dispositional review), the warrant is executed by taking the alleged violator into custody on the warrant. If no dispositional revocation hearing has been conducted, the prisoner at this time is also provided with an Attorney-Witness Election Form (Form I-16) on which he signifies whether he desires an attorney or witnesses at the hearing. He is also provided with a CJA Form 22, on which he may request a court-appointed attorney, or waive the opportunity.

2.46-02. *Withdrawing an Improperly Executed Warrant.* When a warrant has been executed contrary to the Commission's instructions, the parolee is to be released from custody of the violator warrant by an order stating the following: *Release and conditionally reinstate to supervision from custody of warrant dated [ ]. Said warrant is to be held in abeyance per previous instructions.*

2.46-03. *Other Withdrawal of Warrants.*
(a) If there is any other justifiable reason (other than mistaken execution) for withdrawing an executed warrant, then the Notice of Action should read as follows: *Release and conditionally reinstate to supervision from custody of warrant dated [ ]. Said warrant is to be held in abeyance pending [specify what event (e.g., resolution of local charges) the Commission is awaiting before execution of the warrant].*

(b) The U.S. Marshal is to be instructed in a letter forwarding the Notice of Action to draw a diagonal line through the entry indicating execution of the warrant, and to attach a clean copy of the reverse side of a Commission warrant (provided by the Regional Office) to the back of the original warrant.

2.46-04. *Calculating Possible Violator Term.* Upon receiving notification that a parole violator warrant has been executed, the post-release analyst shall promptly review the case to determine the amount of time remaining before the full term expiration date of the sentence. If less than six months remain to be served at the time of warrant execution, the following precautions shall be taken:

(a) If there is no possibility of street time forfeiture or if the amount of street time tentatively subject to forfeiture plus the time remaining to be served at the time of warrant execution totals less than six months, the Regional Commissioner shall request the Bureau of Prisons (by letter or teletype): (1) to calculate an adjusted mandatory release date [assuming forfeiture of any street time tentatively subject to forfeiture]; (2) to promptly notify the Commission of such adjusted mandatory release date; and (3) to automatically release the prisoner on such adjusted mandatory release date if the prisoner is in a Bureau of Prisons facility, unless the Commission in the meantime orders a different release date.

(b) If the prisoner is in U.S. Marshals' custody, the Marshal shall be notified by letter or teletype signed by the Regional Commissioner that the prisoner may not be held in custody beyond the adjusted mandatory release date provided by the Bureau of Prisons. The analyst shall follow up to ensure release by such date. (See 2.48-03(b)).

(c) The Commission shall take all feasible steps to ensure that the revocation decision is made and communicated to the Marshal's Service and/or Bureau of Prisons before the adjusted mandatory release date.

■ §2.47 WARRANT PLACED AS A DETAINER AND DISPOSITIONAL REVIEW.

(a) When a parolee is serving a new sentence in a federal, state or local institution, a parole violation warrant may be placed against him as a detainer.

(1) If the prisoner is serving a new sentence in a federal institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable, provided the prisoner is eligible for and has applied for an initial hearing on the new sentence, or is serving a new sentence of one year or less. In any other case, the detainer shall be reviewed on the record pursuant to paragraph (a)(2) of this section.

(2) If the prisoner is serving a new sentence in a state or local institution, the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of §2.48(b) to assist him in completing this written application.

(b) If the prisoner is serving a new federal sentence, the Regional Commissioner, following a dispositional record review, may:

(i) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and order that the revocation hearing be scheduled to coincide with the initial hearing on the new federal sentence or upon release from the new sentence, whichever comes first;

(ii) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) If the prisoner is serving a new state or local sentence, the Regional Commissioner, following a dispositional record review may:

(i) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(ii) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the Regional Commissioner at the institution in which the parolee is confined.

(iii) Let the detainer stand and order further review at an appropriate time. If the warrant is not withdrawn and no revocation hearing is conducted while the prisoner is in state or local custody, an institutional revocation hearing shall be conducted after the prisoner's return to federal custody.

(d) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in §2.52.

(e)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at §2.20 and §2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant to these rules, whichever comes first. This subsection does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(f) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in §2.48(b).

Notes and Procedures

■ 2.47-01. *Parolees Incarcerated in Federal Institutions (and persons serving new federal sentences housed in state institutions).*

(a) *Lodging Warrant as a Detainer.*

(1) When a U.S. Probation Officer advises the Regional Office that a parolee has been sentenced to incarceration for a new federal offense (usually supported by a copy of a Judgment and Commitment Order) the Commission should issue a parole violator warrant or supplement a previously issued warrant to reflect the conviction.

(2) Where a warrant has been held in abeyance by the U.S. Marshal, the Marshal will advise the Regional Office that issued the warrant of the parolee's transfer to a federal institution for service of the new sentence, and will return the warrant unexecuted to the Regional Office.

(3) In the event the institution designated for service of the new federal sentence is outside the region in which the warrant was issued, the Post Release Analyst will forward the unexecuted warrant and file to the Post Release Analyst in the region where the parolee is incarcerated.

(4) The Post Release Analyst will forward the unexecuted warrant with instructions to the Warden to place the warrant as a detainer.

(5) IN YCA, NARA, AND MEXICAN/CANADIAN TREATY CASES ONLY: The Warden shall be instructed to execute the warrant when the case is placed on the hearing docket.

(b) *Scheduling the Hearings.*

(1) *For offenders serving new sentences over which the U.S. Parole Commission has jurisdiction:*

(A) If the offender is eligible for a prompt initial hearing and applies for parole on the new sentence within approximately 120 days: The Post Release Analyst should forward to the institution two revocation packets with instructions to the Warden to schedule the parolee for a joint initial/dispositional revocation hearing within 120 days of commitment, or as soon thereafter as practicable. These instructions should indicate that if the prisoner waives initial hearing, or if the prisoner is scheduled for a joint initial/dispositional revocation hearing and subsequently waives the initial hearing, the Commission is to be notified immediately and the prisoner notified that this also constitutes waiver of the dispositional revocation hearing. The case will then be processed under (1)(B) below.

(B) If the offender either waives 120 day parole consideration - OR - is serving a new federal sentence with a period of parole ineligibility of 10 years: Upon receipt of the detainer notice, the Post Release Analyst will send Form H-13 (Notice of Pending Dispositional Review) to the prisoner and the prisoner will be afforded a dispositional review under 2.47-02 of this section. If, following this review, the warrant remains as a detainer, the prisoner should be scheduled for a dispositional revocation hearing to coincide with the initial hearing on the new sentence, or upon mandatory release from the new sentence if application for parole is never made.

(C) If the prisoner has already had an initial hearing on the new federal sentence, he/she shall be sent a Notice informing him that his case is being reopened under 28 C.F.R. §2.28(c) for joint consideration of both the new federal sentence and the violator term. This hearing will follow the procedures for the combined initial/dispositional revocation hearing, with the resulting orders following the wording specified for joint initial/dispositional hearings.

(2) *For offenders serving new sentences in federal institutions over which the U.S. Parole Commission does not have jurisdiction* (e.g., sentences of one year or less; state boarders in federal custody). The Post Release Analyst should forward two revocation packets to the institution with instructions to the Warden to place the prisoner on the docket for a dispositional revocation hearing within 180 days from the date of notification of detainer placement, or as soon thereafter as practicable.

(c) *Hearing Procedures.*

(1) Both combined dispositional revocation/initial hearings and dispositional revocation hearings in federal custody will be conducted under the procedures governing institutional revocation hearings (see 28 C.F.R. §2.50); except that if the prisoner requests a representative in addition to legal counsel at a combined hearing, the representative shall be considered a voluntary witness.

(2) Release guidelines will be computed pursuant to 28 C.F.R. §2.20 and §2.21, and a recommendation made with respect to: (A) revocation; (B) forfeiture of street

time credit; (C) commencement of the violator term; (D) setting of a presumptive release date. NOTE: At a joint initial/dispositional hearing this will concern both the new sentence and the violator term. NOTE: The Commission may grant a reparole date nunc pro tunc if the circumstances warrant.

(3) Interim hearings should be scheduled every 24 months if either the new sentence or the original sentence is seven years or more; otherwise, such hearings should be scheduled every eighteen months.

2.47-02. *Parolees Incarcerated in State/Local Institutions.*

(a) *Lodging Warrant as Detainer.*

(1) Once the U.S. Probation Officer advises the Regional Office that the parolee has been sentenced to imprisonment for a new state/local crime (usually supported by a copy of the Judgment and Commitment Order) the Commission should issue a parole violator warrant or supplement a previously issued warrant to state the new conviction. The Regional Office will forward the warrant to the U.S. Marshal in the district where the parolee will serve the new state/local sentence, with instructions to place the warrant as a detainer. NOTE: These procedures would also apply to a parolee serving a state term as a probation/parole violator, if the violation behavior occurred while also on federal parole.

(2) Where a warrant was issued prior to notice of the new conviction and the parolee is incarcerated outside the issuing region, the U.S. Marshal in possession of the warrant will forward it unexecuted to the U.S. Marshal where the parolee is incarcerated on the new sentence, so that it may be placed as a detainer at the state/local institution. The U.S. Marshal then prepares the detainer notice and sends a copy of the notice to the issuing Regional Office. This office retains jurisdiction over the parolee's case until after the first dispositional review, after which the file should be sent to attention of the post release analyst in the region in which the state/local facility is located.

(b) *Dispositional Review.* Upon receipt of the detainer notice, the Post Release Analyst will forward Form H-13 (Notice of Dispositional Review) to the Warden at the correctional institution where the parolee is incarcerated. The notice should be sent in sufficient time to permit receipt of the application and completion of the Commission's review before the 180 day time period has passed. In the event that an application or written statement is not timely received, the dispositional review should nevertheless be conducted within 180 days of notification. If an application or written statement is submitted after the dispositional review has been completed, (*e.g.*, due to delay in court appointment of counsel), the case should be examined to determine whether it should be reopened under 28 C.F.R. §2.28.

(c) *Alternatives After Dispositional Review.*

(1) If the decision of the Commission is to let the warrant stand as a detainer, the case should be placed in a suspense file system for further review every three years by the Regional Commissioner to determine if any change in the decision to let the detainer stand is warranted.

(2) If the decision of the Commission is to order a revocation hearing, the Post Release Analyst is to commence the scheduling of a dispositional revocation hearing. If the prisoner does not complete the required forms or wishes not to have the dispositional hearing, the dispositional revocation hearing will be postponed until such completion. The Post Release Analyst will follow up with

institutional officials to assure that the parolee has received the forms. Depending upon the official designated by the Commission to conduct the hearing, the Post Release Analyst will exercise the following options:

(3) In the event the parolee is released prior to any subsequent review or revocation hearing, the warrant will be executed by the U.S. Marshal and the parolee designated to a federal institution for an institutional revocation hearing.

(A) Hearing Examiner Panel Option:

(1) The Post Release Analyst will direct a copy of the warrant application and a letter to the parolee (with a copy to the Warden and U.S. Probation Officer), advising the parolee that a dispositional revocation hearing will be conducted at the state/local institution. The parolee will be advised of his right to counsel and voluntary witnesses and instructed to complete and return to the Regional Office within 30 days, Parole Form I-16 (Attorney Witness Election Form) and CJA Form 22 (Appointment of Counsel).

(2) Upon receipt of the above forms the Post Release Analyst will forward CJA Form 22 to the U.S. Magistrate in the district in which the state/local facility is located, if appointment of counsel is requested.

(3) After the Commission is advised of appointment of counsel, a letter will be directed to the parolee (with copies to counsel, Warden, and U.S. Probation Officer) informing him of the date and location of the hearing.

(4) The Post Release Analyst will prepare a revocation packet(s) to be hand-carried to the state/local institution by the designated hearing examiner/panel.

(B) Other Designated Official (U.S. Probation Officer): The Post Release Analyst will prepare a revocation packet and forward same to the U.S. Probation Officer designated to conduct a revocation hearing, instructing him to schedule an institutional revocation hearing (month/year). The U.S. Probation Officer will then be responsible for carrying out the procedures otherwise performed by the Post Release Analyst, with copies of executed forms and correspondence forwarded to the Regional Office.

(d) *Dispositional Revocation Hearing Procedures.*

(1) Dispositional revocation hearings for parolees in state/local institutions shall be conducted in accordance with the rules governing institutional revocation hearings at 28 C.F.R. §2.50, except that the hearing may be conducted by one examiner or other designated official.

(2) The examiner or designated U.S. Probation Officer conducting the revocation hearing will prepare a reparole guideline worksheet and revocation hearing summary. NOTE: The Commission may grant a reparole date nunc pro tunc if the circumstances warrant.

(3) Interim record reviews will be scheduled at either (18) or (24) months from the date of the dispositional revocation hearing dependent on whether the original federal sentence was (less than seven years) (seven years or more). If the prisoner comes into federal custody prior to a scheduled interim record review, he will be afforded an interim hearing during the month of the previously scheduled record review.

(4) Upon completion of the hearing process, the case will be referred to the pre-release analyst who will assure the proper processing of the case with respect to statutory interim reviews and pre-release processing. In addition to the Notice of Action, a letter is to be sent to the Warden (with a copy to the Chairman of the State Parole Board) explaining the maximum jurisdiction of the U.S. Parole Commission should the state release the prisoner prior to the date specified on the Notice of Action.

(e) *Parole to a State/Local Sentence*. If the prisoner is still in state custody as the date chosen for reparole approaches, a pre-release review will be conducted. If the decision is to grant an effective parole to the state sentence:

(1) The Bureau of Prisons will be notified to amend their time computation record and provide the Commission with a recalculated full term expiration date which will be placed on the parole certificate;

(2) The Marshals Service will be notified to withdraw the warrant on the date specified [*NOTE:* SINCE THE REVOCATION HEARING HAS ALREADY SET THE DATE FOR COMMENCEMENT OF THE VIOLATOR TERM, WITHDRAWING THE WARRANT AT THIS TIME DOES NOT CANCEL THE VIOLATION OR RESTORE STREET TIME OR AFFECT THE COMMENCEMENT OF THE VIOLATOR TERM].

2.47-03. *Parolees incarcerated in District of Columbia Facilities*. If the parole violation warrant has been lodged as a detainer against a parolee serving a new sentence and designated to a District of Columbia facility, the Parole Commission will transfer jurisdiction of the case to the District of Columbia Board of Parole. A letter will be sent to the District of Columbia Board of Parole advising of the transfer of jurisdiction. A copy of the documents normally to be used as a parole violation packet is to be forwarded with this letter. The letter will advise the District of Columbia authorities to notify the Parole Commission if the offender is transferred into a federal facility.

§2.48 REVOCATION, PRELIMINARY INTERVIEW.

(a) Interviewing Officer: A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) Notice and Opportunity to Postpone Interview: At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by §2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. §3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to §2.51 a subpoena may be issued for the appearance of adverse witnesses or the production of documents.

(c) Review of the Charges: At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to §2.50(d).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) Release notwithstanding probable cause: If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) continuation of revocation proceedings is not warranted despite the violations found; or

(2) incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) Conviction as probable cause: Conviction of a Federal, State, or Local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) Local revocation hearing: A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

Notes and Procedures

2.48-01. *Preliminary Interview.*
(a) The preliminary interview is to be conducted (offered to the parolee) without

unnecessary delay. Where the alleged violator is arrested outside of his district of supervision, the documents specified in warrant application are to be transmitted immediately to the probation officer designated to conduct the interview. The probation officer supervising the case or recommending the warrant may not conduct the preliminary interview.

(b) Releasee is advised of his right to be represented by counsel (retained or court-appointed) at a postponed preliminary interview and at the revocation hearing. Parole Form F-2 and CJA-22 are provided him for this purpose and he shall be given a copy of these forms. Releasee is advised of his right to have witnesses (including adverse witnesses) appear or be interviewed on his behalf at a postponed preliminary interview and at the revocation hearing.

(c) When the parolee contests the charges against him, it will be customary for the parolee's supervising probation officer to be available as a witness at a preliminary interview in the district of supervision, for questioning by either the interviewing officer or the parolee, unless there is good cause for non-appearance (e.g., distance or possibility of aggressive confrontation).

■ 2.48-02. *Authorization of Continuance.* One continuance (postponement of a preliminary interview) may be granted by the interviewing officer for up to 30 days to permit the alleged violator to obtain counsel and/or witnesses. The continuance should be recorded in writing. Any further continuances, for cause, shall be approved by the Regional Commissioner. In cases where the alleged violator is detained by the court on a charge and where the violation warrant has been inadvertently executed, a decision will be made as to whether or not a local revocation will be held at the place of detention or when he is returned to a Federal institution. In such cases the legal office should be contacted for advice.

■ 2.48-03. *The Probable Cause Finding.*
(a) The interviewing officer shall prepare and submit to the Regional Commissioner a summary of the interview which shall include recommended findings of whether there is probable cause to believe that a violation has occurred. A copy of the summary, minus the confidential section (see Appendix 3), is also given to the alleged violator (and his attorney if any) by the probation officer when he sends the original to the Commission. He shall make use of a checklist to guide him as he advises the alleged violator of his rights and the Commission's procedures. The probation officer's summary shall be in the format illustrated in Appendix 3. Accompanying it should be any statements prepared by the prisoner and other pertinent material submitted which has not previously been submitted to the Regional Office.

(b) Upon review of the summary of the preliminary interview, the Regional Commissioner shall either (1) order the prisoner reinstated to supervision; (2) direct that a revocation hearing be conducted in the locality of the charged violation(s) or place of arrest; or (3) direct that the prisoner be transferred to a Federal institution for a revocation hearing. In the absence of probable cause, the Regional Commissioner shall find "insufficient grounds for revocation based on the evidence presented" and reinstate the releasee to supervision, or close the case if his time would have expired had the warrant not been issued. *Every decision to release a parolee shall be implemented without delay.* The Post-release analyst shall send a teletype marked "urgent" to the U.S. Marshal (and the holding facility, if known) stating that the Regional Commissioner has ordered the parolee's release without delay; the U.S. Marshal shall be requested to confirm by return teletype or telephone call as soon as release is effected. The analyst shall verify by telephone that the order has been carried out or request immediate compliance, if a return teletype or call is not received within 24 hours of the order to release.

(c) The Regional Commissioner may also release the subject to the community pending a revocation hearing. In such case, the Commissioner should inform the Marshal in writing to release the subject *pending further instructions*. The warrant should be held in abeyance at the Marshal's office, but a summons should be issued to order the subject to appear at the revocation hearing. When, in such cases, the ultimate decision is to revoke, the Marshal should be instructed by teletype to again take the subject into custody pursuant to the original warrant. Such teletype must be from the Regional Commissioner to the U.S. Marshal, and must reflect an actual statement on an order signed by the Regional Commissioner that the U.S. Marshal is to reassume custody forthwith. If a letter directing the parolee's return to custody is sent in lieu of a teletype, it must be signed by the Regional Commissioner.

Situation 1: Appearance at a Preliminary Interview on the basis of a Summons. After the Commissioner makes a finding that probable cause exists, he may schedule a revocation hearing and (a) issue a warrant to be forwarded to the U.S. Marshal with appropriate instructions (assume custody), or (b) he may issue a summons to be either mailed to the parolee (return receipt requested) or forwarded to the U.S. Marshal with instructions to serve it upon the parolee.

Situation 2: Appearance at a Preliminary Interview on the basis of a Warrant. If the Commissioner finds probable cause after the Preliminary Interview, reinstatement to supervision or release pending further proceedings may be ordered pursuant to 28 C.F.R. §2.48(e). If release pending further proceedings is ordered, the Commissioner should inform the U.S. Marshal in writing (letter or teletype) to release the subject pending further instructions. The warrant will be held in abeyance at the U.S. Marshal's office, but a summons should be issued to order the subject to appear at the revocation hearing. If no release pending further proceedings is ordered, subject remains in the custody of the U.S. Marshal on the basis of the warrant.

Situation 3: Appearance at a local revocation hearing on the basis of a summons.

a. No Warrant issued previously. If parole is revoked and a continuance is ordered, the Commissioner must issue a warrant and forward it to the U.S. Marshal with instructions to assume custody. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance, a certified letter, return receipt requested, with Notice of Action enclosed should be forwarded to the subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary).

b. Warrant previously issued -- subject released pending local revocation hearing. If parole is revoked and a continuance is ordered, the Commissioner must instruct the U.S. Marshal, in writing (letter or teletype) to again take subject into custody by the further execution of the original warrant. Subject may be ordered to voluntarily surrender to the U.S. Marshal if it is deemed appropriate by the Regional Commissioner. In this instance a certified letter, return receipt requested, with a Notice of Action enclosed, should be forwarded to subject. Copies of this letter should be sent to the U.S. Marshal and U.S. Probation Officer (and attorney if necessary).

2.48-04. *Notification of Results of Preliminary Interview.* The parolee shall be promptly notified of the Regional Commissioner's decision. If probable cause is found, he shall be notified in writing of the charges upon which such finding was made and the evidence relied upon. (See Appendix 3). Copies of this letter should be sent to the U.S. Probation Office, the U.S. Marshal, and counsel for the parolee whether appointed or retained.

2.48-05. *Violators in Other Regions.*
(a) If a local revocation hearing is ordered by the Regional Commissioner and the alleged violator is in custody in another region, the case should be transferred to the custody region with the request to make necessary arrangements and to conduct the hearing.

(b) In the case of a violator convicted of a new crime and sentenced to incarceration in a region different from the region of supervision, the region of supervision shall retain control of the case through the dispositional record review stage. Transfer of case responsibility (and the case file) shall be effected upon the scheduling of a revocation hearing or dispositional revocation hearing.

2.48-06. *Supplemental Warrant Application.*
(a)(1) When new violations are brought to the attention of the Regional Commissioner, a supplemental warrant application may be issued at any time prior to the normal expiration of supervision. Alleged violations may not be added to the warrant application after the normal expiration of supervision except as specified in (2) below. Violations not added to the warrant application may not be used as a basis for finding a violation of parole or as a basis for forfeiting street time. However, if parole is revoked on other charges, such information (e.g., violations occurring or discovered after the normal expiration of supervision) may be considered relative to the determination regarding reparole.

(2)(A) Violations of parole occurring or discovered after the normal expiration of supervision may be added to an outstanding warrant only if the parolee is an absconder from supervision for whom a timely warrant has been issued. If the absconding charge cannot be sustained at the revocation hearing, the later occurring or discovered charges may not be used to revoke parole or forfeit street time.

(B) Information which administratively updates a charge already listed on the warrant application (e.g., a conviction on a pending charge) may be listed on a supplemental warrant application at any time, even if the term of supervision has expired.

(b) If the new charges are received *after* the preliminary interview has been conducted, the prisoner and his attorney, if any, shall be informed by letter that such charges will be considered at the revocation hearing. If the hearing is a local revocation hearing, the letter will also state that the alleged violator may request adverse witnesses. A letter of notification should also be issued if new evidence received after the probable cause finding requires the reinstatement of charges upon which a finding of no probable cause was made. The reinstated charge and the new evidence should be described. Once probable cause has been found on one charge or set of charges, no further preliminary interview need be held on supplemental charges.

(c) Additional charges which come to light during the preliminary interview may be used, and a supplemental warrant application should be issued if time permits.

■ 2.48-07. *Recommended Finding of No Probable Cause.* If the interviewing officer finds no probable cause to believe a violation has occurred, he shall contact the Regional Office immediately for instructions. A new preliminary interview should be held in any case where defects, vagueness or omissions in the warrant application can be corrected by a supplemental warrant application.

■ 2.48-08. *No Preliminary Interview Where There Is A Conviction.*
(a) Since the conviction of an offense committed while under supervision constitutes "probable cause" that at least one condition of parole or mandatory release was violated, no preliminary interview is required in such cases. For any serious criminal offense, therefore, a preliminary interview will not be conducted where there is definite information of a conviction. The probation officer should obtain documentary verification of any conviction and transmit it to the Regional Office. The designation request should not be delayed, however, unless there is reasonable doubt as to the authenticity of the information that a conviction has occurred.

(b) The Regional Commissioner shall require a preliminary interview in marginal cases, for example: (1) where there was a conviction for a minor offense and there is a strong possibility that the releasee will be reinstated to supervision; or (2) where other administrative charges clearly constitute the more serious violations; or (3) where the conviction is for an infraction (such as a minor traffic violation, loitering or disorderly conduct) and a fine (rather than imprisonment) is the usual disposition.

(c) Where a forfeiture of collateral constitutes a conviction, in the majority of cases it will fall within the marginal cases described above, and the preliminary interview must be held. Decisions to defer prosecution, suspend acceptance of a guilty plea, or to enter a conviction which under certain state statutes is by its own terms "not final", are not "convictions" and do not remove the need for a preliminary interview nor provide a basis for denial of local revocation hearing (see 2.48-09).

(d) At the time of issuing a violator warrant where a conviction is used as a basis for such warrant, the United States Marshal shall be instructed by use of Form H-24 (with a copy to the probation officer) to furnish a copy of the warrant application to the prisoner (and the probation officer for information purposes only) and, where no preliminary interview is being held, to transfer the prisoner to a federal institution immediately upon receipt of a designation order from the Bureau of Prisons. This order is initiated by the Regional Office of the Parole Commission, and in such case the Regional Office will ask for designation without delay. Prior to designation and transfer, the parolee should be advised in writing by letter that probable cause for violation was established by his new conviction, and of the charges to be considered at his institutional revocation hearing, and his impending transfer.

(e) In cases where a conviction is not used as a basis for a warrant but the Commission is advised of a conviction following such issuance, the Regional Office may advise the Marshal and the probation officer to refrain from holding the preliminary interview which would normally be conducted in the absence of any such conviction. Coincident with such information a supplemental warrant application should be issued for delivery to the prisoner alleging the offense for which the releasee was convicted.

■ 2.48-09. *"Non-Final", Indian Tribal Court, and Foreign Convictions.* Circumstances may arise in which it becomes difficult to determine when a court disposition of criminal charges brought against a parolee or mandatory releasee constitutes a "conviction" of federal, state, or local law. It is essential to be certain that the subject has really sustained a conviction before taking actions regarding forfeiture of street time, denial of a preliminary interview, or denial of a local revocation hearing. Cases in which there is room for doubt as to whether the disposition is a conviction should be referred to the legal counsel's office for advice prior to entering a decision.

(a) For purposes of forfeiture of street time, denial of a preliminary interview, or denial of a local revocation hearing, do not count the following convictions:

(1) "Non-Final" Convictions. A decision to defer prosecution, suspend acceptance of a guilty plea, or enter a conviction which by its own terms is not final is included in this heading. [These dispositions result from a procedure deliberately designed to shield the defendant from adverse consequences of a formal conviction. For example, some state traffic courts will expressly make convictions "non-final" in order to avoid the effect of a state law that requires a person's driving license be revoked if "convicted" of certain traffic offenses. Such convictions only become "final" if the defendant subsequently violates probation. Diversionary programs that involve a guilty plea or finding but no formal conviction also come under this heading].
(2) Foreign Convictions.
(3) Indian Tribal Court Convictions.

(b) For purposes of evidence in Revocation Proceedings:

(1) The following may be treated as conclusive evidence of law violation:
  (i) "Non-Final" convictions of U.S. Laws [where a guilty plea or court finding of guilt was actually entered].
  (ii) Indian Tribal convictions [when it is determined that the parolee had counsel or that counsel was waived].
  (iii) Foreign Convictions.

NOTE: A rare exception to the Commission's ability to rely upon these convictions as conclusive would be when the parolee provides evidence that the conviction was obtained by blatantly improper means (fraud, duress, etc.) or that the conduct committed is not recognizable as a criminal violation under U.S. domestic law.

(2) Indian Tribal Convictions [where there is no positive showing of counsel or waiver of counsel] should be handled as are allegations of U.S. law violation where there is no conviction. That is, the underlying evidence and testimony may be relied upon in order to make an independent finding of a law violation.

2.48-10. *Preference for CTC Placement.* In the case of administrative violations, a Community Treatment Center or similar placement is generally to be preferred to returning the parolee to prison.

§2.49 PLACE OF REVOCATION HEARING.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits any violation of the conditions of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under §2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under §2.44 shall remain on supervision pending the decision of the Commission.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

Notes and Procedures

▌2.49-01. *Local Revocation Hearings.*
(a) If an alleged violator, at the time of the preliminary interview, denies on the Form F-2 that he is guilty of violation and had not been convicted of a crime while under supervision, and requests a local revocation hearing, the probation officer will send the original of the Attorney-Witness Election Form to the Regional Office. The Regional Commissioner will determine the proper location for the local revocation hearing. This should be reasonably near the place of the alleged violation, or if more than one violation is charged, the violation chiefly relied upon; or the place of arrest. The Regional Commissioner has the authority to instruct the Marshal to transport the prisoner to another district, if necessary. Except in unusual circumstances, the place of the hearing will be at or near the place where the alleged violator is in custody on the warrant. The statute requires a local hearing if the above criteria are met, even if no attorney or witness will be present.

(b) When an alleged violator at the preliminary interview refuses to sign the Preliminary Interview and Revocation Hearing Form (Form F-2), the probation officer (in his summary report) so notifies the Regional Commissioner, who determines whether or not to conduct a local revocation hearing. The alleged violator should be expressly informed by the probation officer that his refusal to sign the Form F-2 will be construed as a waiver of his opportunity for a local hearing.

(c) After it has been ascertained that the alleged violator meets the criteria for a local revocation hearing, no date or place for such hearing will be arranged until the United States District Court to whom a request for counsel might have been forwarded has responded, if such request has been made, or a private attorney has been obtained. In any event, this date shall be set no later than 60 days from the date the Commission finds probable cause and orders the holding of a revocation hearing. This is a statutory limit to the Commission's ability legally to hold a local revocation hearing. In an emergency, an official other than a hearing panel may be designated to conduct a hearing within the 60 day limit. The 60 day limit may be extended only if a continuance is granted, or if the actions of the alleged violator (e.g., refusal to participate) prevents the holding of a timely hearing. At times the alleged violator may be temporarily unavailable for a hearing within the 60 day period because he is ill, detained on a writ, has escaped from custody or other such reason. In such cases the hearing will be held as soon as practical at the place of confinement. In cases where the 60 day time limit has not been observed, the examiner panel should ascertain from the parolee what, if any, prejudice has been caused by the delay.

(d) When a date and place has been established and the examiner panel is on the scene and prepared to proceed with the hearing, one continuance only may be granted for good cause (for example, attorney and/or witnesses are unavoidably detained). In this event, either the releasee or his attorney (both if present) will sign the Commission's continuance form. The continued hearing will be set within 60 days from the date the continuance was requested, and will be granted only for unusual cause. Continued hearings granted by the examiner panel in the field will be arranged by the Regional Office. Any further continuance may only be granted 'for good cause' by a Regional Commissioner.

(e) After it has been determined that a local revocation hearing is to be conducted, arrangements must be made for suitable quarters and for recording services. The probation officer and the Regional Office make these arrangements. The hearing generally should be conducted in the nearest federal courthouse in the district selected. It might also be held in a correctional center, detention center or local jail where indicated. The alleged violator and his attorney, if there is one, will be notified by the Regional Office of the time and place of the hearing.

(f) Following the local revocation hearing (except where only a summons was used), the prisoner remains in the Marshal's custody until he has received official written notification of the decision. If revocation is ordered, the Bureau of Prisons designates an institution for service of the remainder of the sentence. A copy of Appeal Form (I-22) is sent with the Notice of Action.

(g) For purposes of denial of a local revocation hearing, do not use "non-final", Indian Tribal Court, or foreign convictions (see 2.48-09).

█ 2.49-02. *Institutional Revocation Hearings*

(a) An alleged violator who does not qualify for a local revocation hearing under §2.49-01 shall be given a revocation hearing upon return to a federal institution. This hearing must be offered within 90 days of the date of execution of the warrant, unless the alleged violator has requested and received any postponement or delay in the preliminary interview or revocation proceedings. In such case, the 90 day period is extended only by the period of actual delay. At times the alleged violator may be temporarily unavailable for a hearing within the 90 day period because he is ill, detained on a writ, has escaped from custody or other such reasons. In such cases the hearing will be held as soon as practical at the place of confinement. In cases where the 90 day limit has not been observed, the examiner panel should ascertain from the parolee, what, if any, prejudice has been caused by the delay.

(b) The request for designation of an alleged parole violator is forwarded to the Regional Office of the Bureau of Prisons, Case Management. Since an institutional revocation hearing must be held within 90 days of the date of execution of the warrant, any delay in designation over two days must be followed up promptly by telephonic inquiry. When a Regional Commissioner has requested the Bureau of Prisons to designate a federal institution for custody of an alleged violator, a courtesy copy of each teletype request shall be sent to the probation officer who requested the warrant and also the U.S. Marshal who is currently holding the prisoner in custody. The teletype will request that the Marshal notify the post-release analyst if the prisoner cannot be moved within ten days of the request. The post-release analyst is responsible for contacting the Marshal's service to request prompt action in the case of delay.

(c) Upon arrival at the institution designated, the alleged violator shall be placed upon the next available hearing docket. In all cases, the alleged violator will be offered the Attorney-Witness Election Form (I-16) by a member of the institution staff, and will either waive representation by an attorney and/or the right to present voluntary witnesses, or request appointment of an attorney (if he has none) and/or state the witnesses he wishes to be present. If he wishes a court-appointed attorney, CJA Form 22 must also be completed. Completion of this form will be assisted by a staff member, who will mail it to the proper U.S. District Court. If the alleged violator wishes a continuance for the purpose of obtaining voluntary witnesses or an attorney (appointed or retained), Form I-21 will be used to request such continuance. One continuance only to the next docket may be granted by the panel. The releasee shall be given a copy of the Attorney-Witness Election Form or the Form CJA-22 upon request.

(d) Upon refusal of an alleged violator to sign an Attorney-Witness Election Form (Form I-16) the examiner panel shall orally advise him of his right to receive a continuance for the purpose of obtaining an attorney and/or witnesses, if he has none. If he does not make a request for a continuance by signing the proper form, the hearing shall be held immediately regardless of his refusal.

(e) Addition to Dockets. Upon arrival at the institution the presiding examiner shall inquire as to the number of alleged violators who have arrived since the "list of eligibles" was prepared. A determination must be made at that time as to which of those alleged violators *must* be added to the docket in order to comply with the statutory time limit (90 days from the date of execution of the warrant). Alleged violators who have indicated that they desire appointment of an attorney or that they need to obtain voluntary witnesses must appear before the panel to request a continuance. After a request for designation of a federal institution has been made for an alleged violator, the Regional Office should make copies of the pertinent documents leading up to the issuance of the warrant and the revocation hearing. To this packet of material should be added the most current Annual Summary Report (Form F-3).

(f) At the time of the submission of a "list of eligibles" to be heard at the institution, the Regional Office is notified of the names of any alleged violators who plan to have the attorney representation or witnesses' testimony.

■ 2.49-03. *Institutional Revocation Hearings for Alleged Violators In District of Columbia or Outside the Contiguous 48 States.*

(a) If an alleged violator who had been serving a District of Columbia sentence (not a federal sentence) has a D.C. institution designated by the Bureau of Prisons as the place of confinement, the Regional file is transferred to the D.C. Board of Parole and the revocation hearing and the decision is made by the District of Columbia Board of Parole. The Commission has no further interest in the case unless and until the prisoner is transferred to a federal facility at some later date, at which time the D.C. Board of Parole should re-transfer the file to the Regional Office. Note: this does not apply to prisoners serving federal sentences, who remain under U.S. Parole Commission jurisdiction.

(b) When an institution outside the contiguous 48 states is designated as the place of confinement, the revocation hearing shall be conducted in the same manner and by the same process as if in a federal institution.

■ §2.50 REVOCATION HEARING PROCEDURE.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

(f) A revocation decision may be appealed under the provisions of §2.26 or §2.27 as applicable.

Notes and Procedures

■ 2.50-01. *Purpose of Revocation Hearing.* The fundamental purpose of a revocation hearing is to determine whether there has been a violation of conditions of parole and/or mandatory release of sufficient frequency or severity to warrant removal from the community. Because the releasee stands to lose his conditional freedom he has certain rights to due process during the revocation process; but he is not entitled to a full adversary hearing as in a new criminal procedure. A primary illustration of the difference between a criminal trial and a revocation hearing is that in a criminal trial, a conviction may be obtained only if the Government proves its facts beyond a reasonable doubt. In a revocation hearing, the panel need only find that a violation is shown by a preponderance of the evidence [18 U.S.C. §4214(d)]. This simply means that the weight of all the evidence before the panel must be toward showing a violation. In addition, there is a more relaxed rule of evidence, permitting letters, affidavits, and reports in lieu of testimony: *Morrissey v. Brewer* (Supreme Court, 1972). Hearsay testimony (reporting what another, not present, has said concerning the alleged violator) is also permissible under this rule.

■ 2.50-02. *Procedural Rights of Alleged Violator.* The following procedural rights are applicable:

(1) Notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing (Warrant Application - Parole Form H-20 and Hearing Notice);

(2) Opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to Section 3006A) or, if he chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation;

(3) Opportunity for the parolee to be apprised of the evidence against him, and if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reasons for not so allowing. (Adverse witnesses are authorized at local revocation hearings only). It will be customary for the parolee's supervising probation officer to be available as a witness at a local revocation hearing in the district of supervision, for questioning by either the examiner(s) or the parolee, unless there is good cause for non-appearance (e.g., distance or possibility of aggressive confrontation). Other persons who provided information bearing on the charges need not be present at the hearing unless requested for personal confrontation; where needed, however, they may be requested or subpoenaed to testify;

(4) Written notice of the Commission's determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest (Notice of Action) shall be prepared by the Commission setting forth the factors considered and reasons for revocation and any continuance.

■ 2.50-03. *Reporter or Recording Device.* Reporter or recorder devices brought in by the alleged violator or his attorney are not permissible. No reproduction of the hearing other than provided by the Commission will be permitted.

■ 2.50-04. *Sworn Testimony.* Sworn testimony may be taken by order of the Regional Commissioner, or in the discretion of the hearing examiner conducting a revocation hearing, where such testimony would appear to be useful in resolving a factual dispute or otherwise appears warranted. Sworn testimony is taken as follows: The examiner instructs the witness to raise his right hand, then asks, 'Do you solemnly [swear] [affirm], under penalty of perjury, that the testimony you are about to give in the case now in hearing will be the truth, the whole truth and nothing but the truth [so help you God]?

■ 2.50-05. *Continuance of Violator Hearing.* One continuance to the next hearing docket date may be granted by the examiner panel at the request of the subject for the purpose of securing counsel or witnesses, or at the request of counsel for further preparation of the case.

(a) The time of continuance is fully at the discretion of the examiner panel. A Commission Order shall be executed to give written notice of this decision. A special form, which is available at the institution in the record office, shall be executed in duplicate giving reasons for the continuance. A copy of the continuance form is given to the prisoner and a copy put in the file.

(b) A second continuance to the next hearing docket may be granted by the examiner panel only for compelling reasons. The Commission Order and second continuance form will be executed and processed as per paragraph (a) above. No further continuance shall be granted by the examiner panel. Requests for more than two continuances or for a longer time must be in writing to the Regional Commissioner and must be made at least ten days prior to the scheduled hearing docket.

(c) Rejection of an attorney - if counsel is present, but alleged violator indicates that he does not wish to be represented by that particular attorney, the examiner panel, after determining the basis for the alleged violator's refusal, should grant a continuance and request the caseworker to assist the alleged violator in executing another CJA Form 22 or permit communication with family, etc., if a retained attorney is desired.

█ 2.50-06. *Lawyer's Role in Revocation Proceeding.*
(a) Taken in part from a 1971 decision by the U.S. Court of Appeals for the Second Circuit, (*U.S.* v. *John Bey*): "There is no question but a lawyer's role is welcomed in a revocation process. It is important to obtain accurate factual exposition and evaluation of facts. At times, alleged violators may suffer from absence of trained legal assistance. A trained lawyer might well have discovered mitigating circumstances and hidden significances not reported or revealed in alleged violator's explanation of alleged charges." A competent counsel should augment the flow of relevant information and guard against error and distortions, which will benefit both the examiner panel and violator.

(b) The examiner panel must be in FULL CONTROL. Violation hearings should not become legal battles but must follow a fact finding process. The lawyer must be informed that this type of hearing is informal. If necessary, counsel should be informed that he will not be permitted to employ disruptive tactics or to impede the flow of relevant information.

(c) An alleged violator may instead of an attorney have a representative appear with him at a revocation hearing. Such person is restricted to making a short statement at the conclusion of the hearing. If he has information relative to the charges placed against the releasee he is classified as a witness rather than a "representative".

█ 2.50-07. *Hearing Procedure.*
(a) Advise of legal rights - procedural safeguards. Use Revocation Checklist as a guide for introduction to the hearing.

(b) At the opening of the hearing, the parolee will be told that the Parole Commission will consider all facts which come out (both mitigating and aggravating) during the course of the hearing.

(c) Identify counsel and witnesses.

(d) Questions should be directed to the alleged violator and he alone must answer, but he may confer with counsel at any time.

(e) Each charge will be read as it appears on the Warrant Application (Parole Form H-20). Supporting information under each charge may either be read or paraphrased.

(f) When the charges set forth in the Warrant Application are reviewed, the alleged violator will be required to either admit or deny each charge. If the attorney advises the alleged violator to stand mute, or invoke the Fifth Amendment to the Constitution, the examiner panel must require the subject to personally indicate that this is his desire. If the alleged violator does stand mute or invokes the Fifth Amendment, that then is his answer to the charges. He should be further advised that the hearing will still proceed. A finding of fact will be made even if he does not make a statement, and a decision will be made based on the information available. Be certain to keep control of the hearing. If the parolee or his attorney threatens a court procedure, inform them that is their privilege.

(g) After each charge is read and subject has admitted or denied the charge, he has the right to present evidence and give an explanation. The violator can confront the USPO - if it is a local revocation hearing - as well as confront and cross-examine any adverse witnesses. However, the examiner panel for good cause may disallow confrontation of adverse witnesses by the alleged violator. In such case, the panel must indicate in its summary the reason why confrontation was not allowed. Any testimony out of the presence of the violator must be promptly summarized for the violator with an opportunity for response.

(h) Questioning by Examiner Panel: The examiner panel controls the hearing and rules out any irrelevant and repetitious information, and denies the appearance of any adverse witnesses if good cause exists (*Morrissey*). The attorney or witnesses may not question or cross-examine the examiner panel, but must be limited to giving information relative to the alleged violation charges, and whether in their opinion the alleged violator should be reinstated to supervision.

(i) If during the course of discussion and review of alleged charges the violator admits to other charges not known to the Commission previously, the violator should be told that this fact may be used against him and that a violation finding can be made on same. Further, the alleged violator must be given time to prepare a defense, and if this results in a continuance of proceedings a supplemental warrant must be prepared.

(j) In a local revocation hearing, the alleged violator's probation officer normally shall be permitted to be present throughout the proceeding, except during the deliberation of the panel.

■ 2.50-08. *Information on Parolee's Standing as a Good Parole Risk.*

(a) The Parole Commission statute requires that a parole hearing be conducted within 120 days of revocation: 18 U.S.C. §4208(a). The prisoner should therefore be informed specifically at this stage of the proceeding that the panel will also render a recommendation as to reparole suitability, as well as to revocation, and that this hearing will serve for both purposes.

(b) Revocation may be based only on those charges set forth in the Warrant Application or Supplement or admitted during the course of the revocation hearing. However, adverse information bearing on the subject's behavior while under supervision may be considered in assessing the parolee's standing as a good parole risk. This information, and its potential significance for the Commission's decision-making process, should be fully discussed with the alleged violator.

■ 2.50-09. *Recommendation of Examiner Panel.*

(a) Following the discussion of the charges and the parolee's reparole suitability, the hearing panel will make its recommendation. When the parolee is recalled to the hearing room, the recommendation and reasons are announced. The attorney and supervising probation officer are permitted to be present when recommendations are given in revocation hearings.

(b) Advise that the examiner panel action is a recommendation and that within 21 days an official decision will be mailed [i.e., a Notice of Action with reasons for revocation, plus the reasons for continuance, if applicable]. Advise that the attorney will also be notified when a final decision is reached by a copy of the Notice of Action which will be sent to him. Inform the parolee that he has the right to appeal the official decision.

■ 2.50-10. *Disclosure of Documents at the Revocation Hearing.*

(a)(1) For local revocation hearings or institutional revocation hearings where the inmate is in federal custody but has no new sentence, the post release analyst will attach a packet to the letter of probable cause containing one copy of each of the documents which the examiner panel will consider at the revocation hearing.

(2) These copies are to be delivered to the alleged violator along with the letter of probable cause. The following notation will be added to the bottom of the probable cause letter in these cases: "enclosure -- documents supporting probable cause finding".

(3) Disclosure as outlined above will be made whenever the parolee is notified that new charges have been added after the probable cause finding has been made.

(b) For institutional revocation hearings where the inmate is in federal custody and is serving a new federal sentence, the post release analyst should forward to the institution a packet of material containing one copy of each of the documents which the examiner panel will consider at the revocation hearing. These copies are to be delivered to the alleged violator. The packet should be sent to the institution:

(i) within 120 days of commitment or as soon thereafter as practicable, if the inmate is eligible for a prompt initial hearing and applies, or

(ii) upon mandatory release from the new sentence if the inmate is ineligible or does not apply.

(c) For institutional revocation hearings where the prisoner is in state custody and is serving a new state sentence, the post release analyst should forward to the institution , approximately sixty (60) days prior to the scheduled hearing, or as soon thereafter as practicable, a packet of material containing one copy of each of the documents which the examiner panel will consider at the hearing. These copies are to be delivered to the alleged violator. The scheduling of hearings under this subsection is controlled by 28 C.F.R. §2.47(b)(1)(i).

(d) A cover sheet will be attached to each packet briefly listing each document included, a copy of that cover sheet will be retained in the file.

(e) If any of the material in the packet appears to be sensitive and confidential, the post release analyst will give the packet to the disclosure specialist for review.

(f) The disclosure specialist will determine whether any of the documents meets the three disclosure exemptions. If an exemption should be applied, then the sensitive document (or portion thereof) is removed from the packet. If that is done, the following notation will be added to the cover sheet: "Information exempt from full disclosure has been removed from this packet. At your revocation hearing, you will be apprised of the nature of this evidence".

(g) Disclosure specialists should be certain that the exemptions apply and non-disclosure is justifiable, since unjustified non-disclosure can cause revocation decisions to be overturned. Material in arrest reports recounting the observations of the arresting officer should be disclosed.

(h) Where a document produced by a federal agency is marked "FOI Exempt", or such document or one produced by a state or local agency contains restrictive language which would prevent its inclusion in the revocation package, the disclosure specialist should do the following:

(1) If there is nothing in the content of the document that clearly meets one or more of the standard exemptions at 28 C.F.R. §2.55 (the disclosure exemptions), then the originating agency must be contacted and informed that unless the Commission is permitted to disclose the document, the revocation effort is likely to be unsuccessful.

(2) If the agency is able to submit a written justification for not disclosing all or some part of the document, then disclosure can be withheld.

(3) If there is any refusal to cooperate in this regard by any federal agency whose document is critical in our revocation process, please notify the legal office.

(i) If a FOIA request is filed by the inmate or his attorney for documents pertaining to an upcoming revocation hearing, the disclosure specialist should inform the requester that disclosure has previously been made to the alleged violator and enclose a copy of the coversheet. This letter should inquire whether the requester wishes the same disclosure to be made a second time.

2.50-11. *Notification of Attorney.* See 2.24-12.

§2.51 ISSUANCE OF A SUBPOENA FOR THE APPEARANCE OF WITNESSES OR PRODUCTION OF DOCUMENTS.

(a)(1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the Regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the Regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the Regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the Regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

Notes and Procedures

2.51-01. *In General.* When an alleged violator requests the presence of adverse witnesses at the local revocation hearing the Commission will ascertain whether the witnesses requested have provided information to be used as a basis for revocation. If witnesses will not appear voluntarily, the Commission will make a decision on the necessity of the witness and whether issuance of a subpoena is required.

2.51-02. *Federal Employees and Probation Officers.*
(a) Federal employees may be subpoenaed to appear at preliminary interviews (if they are adverse witnesses) and at local revocation hearings, without witness fees, provided that reimbursement is made for transportation at the prevailing rate approved for such travel.

(b) Probation officers are obliged to appear upon request of the Commission at a preliminary interview or revocation hearing (18 U.S.C. 3655). A subpoena is not normally required for the appearance of an officer from within the district the hearing was conducted. However, probation officers should be subpoenaed when their presence is required at a Commission hearing outside their judicial district. The Probation Division bears the expense of producing probation officers as witnesses whenever their presence is requested by competent authority. To exercise fiscal control they require that a subpoena be issued prior to authorizing such travel outside a judicial district.

2.51-03. *Non-Federal Witnesses.*
(a) All other witnesses including law enforcement officers may be reimbursed (either directly or to his agency) when attendance is required by subpoena at the prevailing rate per day of appearance and for the time necessarily occupied in going to and returning from the Commission proceeding, and at the prevailing rate per mile for going from and returning to their places of residence. Witnesses who must attend proceedings so far removed from their places of residence as to prohibit attendance and return on the same day, shall receive the prevailing additional allowance per day for expenses of subsistence.

(b) Witnesses shall be paid following the conclusion of the preliminary interview or revocation hearing to which they have been called to testify. The hearing examiner shall provide Form OBD-3 to the witness. Upon completion of this form, the hearing examiner will instruct the witness to take the form to the local U.S. Marshal's office and receive payment in cash. If travel or per diem is involved, the hearing examiner may instruct the witness that the U.S. Marshal's office will issue a check upon receipt of the witness form. If advance funds are needed in the case of long distance travel the witness should be instructed to advise the Marshal's Service.

(c) All witnesses shall be advised that only authorized expenses of travel and subsistence shall be paid. Witnesses traveling more than 100 miles must be paid actual travel expenses.

2.51-04. *Policy Limitations.*
(a) While the Commission's subpoena power is broad, its use should, except in emergencies, be restricted to adverse witnesses within the district where the proceeding is held, when such persons have refused to attend or are unlikely to attend. A subpoena for a requested adverse witness from outside the district should be issued only when an affidavit in lieu of testimony is insufficient to settle the factual dispute raised by the alleged violator.

(b) The alleged violator bears a heavy burden to prove that a witness to testify on his behalf will not appear voluntarily or give a written statement without subpoena. The witness should be essential to determining the basic facts in genuine dispute, rather than merely testimonial to mitigating circumstances, which can more conveniently be obtained by letter or affidavit. Witnesses in mitigation will in no event be required to attend a preliminary interview, since the fact of violation is the principal issue, rather than mitigating circumstances.

2.51-05. *Subpoena To Aid in Apprehending Absconders.* The following procedure is to be used in cases where the Parole Commission has issued a warrant for a parole absconder and the United States Marshal wishes to aid its search by subpoena for such records as telephone company records, etc., and other third-party records that might reveal the absconder's whereabouts. The official in charge of the investigation should be advised to contact the United States Attorney's Office in the judicial district which imposed the sentence and request that a motion be filed (under the caption of the original criminal proceeding in which the sentence was imposed).

§2.52 REVOCATION DECISIONS.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand (ii) Modification of the parolee's conditions of release (iii) Referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) It is the Commission's interpretation of 18 U.S.C. §4210(b)(2) that, if a parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by any term of imprisonment, detention, or incarceration in any penal facility, forfeiture of time from the date of such release to the date of execution of the warrant is an automatic statutory penalty, and such time shall not be credited to the service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d)(1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in §2.10(b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

(e) In determining whether to revoke parole for noncompliance with a condition of fine, restitution, court costs or assessments, and/or court ordered child support or alimony payment, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Notes and Procedures

2.52-01. *Specific Findings Prerequisite to Forfeiture of Street Time.*
(a) A separate order requiring the forfeiture of none, a specific number of days, or all of the "street time" is to be entered if revocation is ordered. "Street time" may only be forfeited as provided in paragraphs (b), (c), and (d) below.

(b) *Absconders and Willful Refusals to Respond.*
(1) *Absconders:* An absconder is subject to forfeiture of all the time he was intentionally in absconder status. The term "absconding" describes not only the parolee who intentionally leaves the district of supervision without permission, but also one who intentionally conceals himself from active supervision within the district. Normally, a precise date from which to measure the absconder period will be found in the USPO letter or in the USPO's testimony. This date might be the date the USPO first tried to contact the parolee unsuccessfully and first discovered that he or she had left his place of residence and his whereabouts became unknown. However, the date may in some cases, be the date of actual departure (if known *for certain*) or the date a written permission terminated, if the absconder failed to return within the time set (a copy of such permission should be presented or verified at the hearing). In any case, the date should be conclusive and not a date arrived at by guess-work; it must be a specific date mentioned in the documentary evidence available or in the testimony. The voluntary return of the parolee, or execution of the warrant (or filing of a detainer) marks the limit of the period which can be forfeited. If no clear earlier date is possible, the date on which the warrant was issued should be used. NOTE: In all cases of failure to report or submit to supervision, the failure must have been intentional. For example, if the parolee was hospitalized because of an emergency, no forfeiture should be made. A parolee who absconds and then is detained as a result of a subsequent criminal charge should have time forfeited from the date he absconded till the date taken into custody on such charge (federal, state, local).

(2) *Willful Refusal to Respond:* The same need for conclusiveness applies to a finding that a parolee failed to respond to any order of his probation officer or of the Commission. If the parolee refused to respond to an order of his probation officer, the date selected must be the date the parolee was to have responded and failed. If a summons was disobeyed, the date the period begins is the date the hearing or interview was to have been held. The end of the forfeited period is the date the parolee finally reported to his probation officer, or the date a warrant was filed as a detainer or executed. "Street time" may also be forfeited for any

period of time during which a parolee continuously and willfully fails to abide by one of the conditions of parole (e.g., failing to submit supervision reports, failing to report for drug testing) even though a parolee complies with all other conditions of release.

(c) *New Convictions.*
(1) Any new conviction (whether felony or lesser charge) which is punishable by any term of confinement or imprisonment in a penal facility requires forfeiture of all "street time", except as noted under paragraph (2) and (3). Actual imprisonment need not have been imposed. If in doubt as to whether the offense is at all punishable by a term of imprisonment, the decision as to possible forfeiture must be withheld pending investigation by the probation office. *Note:* In some cases, a minor conviction that is classified under the "administrative section" of the reparole guidelines will nonetheless require "street time" forfeiture.

(2) For purposes of forfeiture of "street time" do not use "non-final", Indian Tribal Court, or foreign convictions (see 2.48-09). However, the fact that a conviction is under appeal or is subject to being set aside at some later date does not alter the validity of the conviction for the purpose of forfeiting street time.

(3) Where forfeiture of cash bond (collateral) in lieu of court appearance constitutes a conviction, such conviction may not be used to forfeit street time. This is because the offense is deemed to be one not punishable by imprisonment since the offender has the option of evading imprisonment by forfeiting collateral.

(4) Where a prisoner, in appealing the revocation of his parole, specifically denies that a conviction was sustained, the Regional Commissioner should request the United States Probation Officer to submit a copy of the judgment of conviction (certified if possible by the clerk of the court). In this way, disputes of this nature (which are rare) can be conclusively resolved. However, in all cases in which the fact of conviction is not expressly denied, the Commission is entitled to rely upon the written report of the United States Probation Officer stating that a conviction has been sustained and that it is or is not of a type requiring forfeiture of time on parole pursuant to 18 U.S.C. §4210(b). It is not grounds for a rehearing in such a case that further evidence to prove the fact of conviction was not obtained. If the prisoner actively contests the fact of conviction before the National Appeals Board, the correct remedy would be to decide the case on all other issues and to remand the case to the Regional level so that the issue concerning the conviction can be resolved. If the prisoner turns out to be correct, the Regional Commissioner would then reopen the case under 28 C.F.R. §2.28 for appropriate action.

(d) *Exceptions:*
(1) No forfeiture is possible for those committed under the Youth Corrections Act or the Narcotic Addict Rehabilitation Act or those serving a Mexican or Canadian sentence in this country pursuant to their transfer under the treaties with those countries for the execution of penal sentences. However, absconding by a YCA, NARA, or Mexican or Canadian sentenced offender will produce the same result by extending the term of sentence. A separate order should show (by dates) the time to be added to the sentence.

(2) For cases sentenced under the District of Columbia (D.C.) Code, forfeiture of all "street time" is mandatory, regardless of the basis of revocation.

(3) In the case of a special parole term violator whose parole is revoked, all "street time" shall be forfeited, regardless of the basis of revocation.

(e) *Forfeiture of "Street Time".* In all cases, the possibility of forfeiture must be discussed with the prisoner at the time of review of the specific charge giving rise to that possibility, and the possible period which may be forfeited must be discussed at that time. NOTE: "Street time" shall be forfeited in any case in which (a) parole has been revoked and, (b) the parolee has been convicted of a new crime (as described above) regardless of whether such crime was initially charged as a violation of parole.

(f) *Conviction After Revocation Hearing.* When a conviction occurs after a revocation hearing (and there was none prior to the revocation hearing) the Regional Commissioner shall reopen the case and schedule a subsequent hearing with the violator. Following such hearing, a new order may be made relative to forfeiture of "street time". Note: The provision of this hearing in order to forfeit "street time" is a statutory requirement.

(g) *Credit for Time in Confinement.* Upon revocation, credit is to be given a prisoner towards service of his maximum sentence for every day in federal confinement not previously credited (including confinement on a warrant later withdrawn; and confinement on an improperly executed warrant, whether or not the prisoner was also in state or local custody). In conducting revocation hearings where street time is forfeited, examiners should be alert to situations where a parolee has spent time in confinement as described above. In such case, the following should be added to the Order: *"Time spent in confinement from date to date is to be credited toward service of maximum sentence".* It is to be noted that whether credit toward the reparole guidelines is given is a separate determination governed by 28 C.F.R. §2.21.

■ 2.52-02. *Reparole Guidelines.* Reparole guidelines should be completed for all revocation hearings. NOTE: The revocation packet prepared for use by the examiners should include the previous salient factor score sheet and pre-sentence investigation to facilitate recomputation of the salient factor score.

■ 2.52-03. *Driving While Impaired.* In the case of a parolee found to have violated parole by driving under the influence of (while impaired by) alcohol or drugs, revocation will be the presumptive sanction if the parolee is found to have been driving in a life threatening manner or has caused a serious accident, or if the violation is the second or subsequent such violation during the current period of supervision. Whenever parole is not revoked, the presumptive response will be imposition of a special condition that the parolee undergo an aftercare treatment program for alcoholism and surrender his driver's license to the U.S. Probation Officer for a period of time determined by the Regional Commissioner (normally 90-180 days). Consideration of the public welfare shall guide the Commissioner in determining whether such action may be withheld in a particular case.

■ §2.53 MANDATORY PAROLE.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addict Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010(c) of the Youth Corrections Act) serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve until the expiration of his sentence less good time.

(b) When feasible, at least sixty days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to §2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is five years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoner.

Notes and Procedures

■ 2.53-01. *Review Procedure.*
(a) Upon receipt of a progress report from the institution prior to the "two-thirds" date, an examiner panel shall conduct a record review. A recommendation to parole normally should be made in order to provide a period under supervision for all except those who have the greatest probability that they will commit any federal, state or local crime following release. A parole should not be recommended, however, for prisoners who have seriously or frequently violated the rules of the institution.

(b) Unless mandatory parole is ordered on the basis of the record review, the case should be placed on the next hearing docket for a personal Mandatory Parole Hearing. If the Regional Commissioner disagrees with a panel recommendation to grant Mandatory Parole on the record, he may order that the case be heard as originally scheduled. If parole is not recommended following such hearing, the panel may recommend any such action as may be appropriate.

■ 2.53-02. *Release Certificate.* The Commission's regular parole release certificate (Parole Form H-8) shall be used, except that the word "Mandatory" should be typed beneath the title of the form.

■ 2.53-03. *Concurrent State Sentences.* If Mandatory Parole at two-thirds of a federal term is not granted on the basis of a record review, and the prisoner is serving a state sentence concurrently, no personal hearing is required. If the prisoner is merely "boarded" in a state institution such personal hearing must be conducted as in cases confined in federal facilities.

■ 2.53-04. *Previous Hearing Within 120 Days.* If a personal hearing is conducted within 120 days of an inmate's "two-thirds date" the examiner panel may recommend relative to Mandatory Parole without the need for a subsequent review on the record or separate Mandatory Parole hearing. Any serious institutional misconduct following such determination will be reported to the Commission in accordance with procedures relative to any parole grant, and, in such event, a rescission may be scheduled.

■ 2.53-05. *Effective Date.* The effective date of Mandatory Parole normally shall be the date on which two-thirds of the maximum term(s) occurs. In the event a Mandatory Parole Hearing is not conducted prior to such date (i.e., where such prisoner has previously waived such hearing) the effective date shall be set as soon as practicable thereafter, but in no case later than the date the prisoner would otherwise be released on the basis of "good time" credits.

■ §2.54 REVIEWS PURSUANT TO 18 U.S.C. §4215(c).

The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institution or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

■ §2.55 DISCLOSURE OF FILE PRIOR TO PAROLE HEARING.

(a) Processing Disclosure Requests. At least 60 days prior to a hearing scheduled pursuant to 28 C.F.R. §2.12 or §2.14 each prisoner shall be given notice of his right to request disclosure of the reports and other documents to be used by the Commission in making its determination.

(1) The Commission's file consists mainly of documents provided by the Bureau of Prisons. Therefore, disclosure of documents used by the Commission can normally be accomplished by disclosure of documents in a prisoner's institutional file. Requests for disclosure of a prisoner's institutional file will be handled under the Bureau of Prison's disclosure regulations. The Bureau of Prisons has 15 days from date of receipt of a disclosure request to respond to that request.

(2) A prisoner may also request disclosure of documents used by the Commission which are contained in the Commission's regional office file but not in the prisoner's institutional file.

(3) Upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of the initial hearing, interim hearing, and a 15-year reconsideration hearing, pursuant and subject to the regulations of the U.S. Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A), F.R.Crim.P.

(b) Scope of Disclosure. The scope of disclosure under this section is limited to reports and other documents to be used by the Commission in making its determination. At statutory interim hearings conducted pursuant to 28 C.F.R. §2.14 the Commission only considers information concerning significant developments or changes in the prisoner's status since the initial hearing or a prior interim hearing. Therefore, prehearing disclosure for interim hearings will be limited to such information.

(c) Exemptions to Disclosure (18 U.S.C. §4208(c)). A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions which, if known to the prisoner, could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information which, if disclosed, might result in harm, physical or otherwise to any person.

(d) Summarizing Nondisclosable Documents. If any document or portion of a document is found by the Commission, the Bureau of Prisons or the originating agency to fall within an exemption to disclosure, the agency shall:

(1) identify the material to be withheld; and

(2) state the exemption to disclosure under paragraph (c) of this section; and

(3) provide the prisoner with a summary of the basic content of the material withheld with as much specificity as possible without revealing the nondisclosable information.

(e) Waiver of Disclosure. When a timely request has been made for disclosure, if any document or summary of a document relevant to the parole determination has not been disclosed 30 days prior to the hearing, the prisoner shall be offered the opportunity to waive disclosure of such document without prejudice to his right to later review the document or a summary of the document. The examiner panel may disclose the document and proceed with the hearing so long as the prisoner waives his right to advance disclosure. If the prisoner chooses not to waive prehearing disclosure, the examiner panel shall continue the hearing to the next docket to permit disclosure. A continuance for disclosure should not be extended beyond the next hearing docket.

(f) Late Received Documents. If a document containing new and significant adverse information is received after a parole hearing but before all review and appellate procedures have been concluded, the prisoner shall be given a rehearing on the next docket. A copy of the document shall be forwarded to the institution for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of the new hearing and his right to request disclosure of the document pursuant to this section. If a late received document provides favorable information, merely restates already available information or provides insignificant information, the case will not be reopened for disclosure.

(g) Reopened Cases. Whenever a case is reopened for a new hearing and there is a document the Commission intends to use in making its determination, a copy of the document shall be forwarded for inclusion in the prisoner's institutional file and the prisoner shall be informed of his right to request disclosure of the document pursuant to this section.

Notes and Procedures

2.55-01. *Processing Disclosure Requests -- Institutional File.* Since the Commission's file consists mainly of documents provided by the Bureau of Prisons, prehearing disclosure will normally be accomplished by disclosure of documents in a prisoner's institutional file.

(a) To ensure that the institutional file is complete, any documents that the Commission receives concerning a prisoner prior to an initial hearing should be forwarded to the institution upon receipt. A copy does not have to be retained by the Commission unless the document requires a response by the Commission, or is too sensitive for inclusion in the institutional file. If the Commission does not yet have a file on the prisoner, a correspondence file should be set up in the regional office for these documents.

(b) By Form I-24 institutional staff shall notify a prisoner of his right to request disclosure of his institutional file at least 60 days prior to a hearing. If the prisoner makes a timely request for disclosure of his institutional file (i.e., gives 15 days for staff to respond to request), institutional staff shall ensure that the prisoner is provided disclosure 30 days prior to the hearing. At the time the institutional file is disclosed, the prisoner must complete the section of Form I-24 which indicates that he has reviewed material in his institutional file. If timely requested disclosure is not provided within the established time limits, institutional staff shall give the inmate the opportunity to waive prehearing disclosure by completing the waiver portion of Form I-24.

(c) Institutional staff shall ensure that the institutional file includes:

(1) Current official sentence computation record;

(2) Parole application Form (I-24);

(3) Presentence report(s) for each court docket number noted on the sentence computation record. If one year or more has elapsed between the date of the original presentence report and the date the prisoner began service of the Federal sentence, the institutional staff shall request that the probation officer provide an update to the presentence report to include: (A) additional arrests or convictions during this period, and (B) significant changes related to social history (e.g., opiate dependency, employment, marital status). In order to expedite the probation officer's investigation and reply, a completed Form I-32, Background Statement of Prisoner, should be sent with the request to the probation officer;

(4) Probation Violation Report(s), if applicable, which include a description of the overall circumstances surrounding either the new criminal conduct or technical violations of probation. If this information is not in the institutional file, institutional staff shall request it from the appropriate probation officer;

(5) *Watts* v. *Hadden Cases*. If a prisoner is a member of the plaintiff class in the above case, the prisoner must have completed the classification process including the development and documentation of a program plan.

(d) The institutional file shall be divided into three sections:

(1) *Bureau of Prisons Only Section*. This section of the file shall consist of sensitive information deemed by the Bureau of Prisons to be totally nondisclosable or not germane to parole. The Commission shall not consider information in this section of the institutional file and disclosure will not be made.

(2) *Disclosable Section*. This section of the file shall contain all disclosable documents or summaries of documents. The prisoner may obtain copies of documents in this section of the file under the Bureau of Prisons regulations except that the presentence report may not be copied without the issuing court's permission.

(3) *Parole Commission/Bureau of Prisons Joint Use Section*. This section of the file shall consist of complete copies of documents which were summarized for disclosure. The Commission will consider these documents in total so long as a summary has been disclosed or disclosure has been waived.

(e) Prior to the initial hearing, but no later than the first day of the month preceding the month of the docket, institutional staff shall prepare and send to the regional office a file (called the "minifile" by the Bureau of Prisons) which consists of all documents listed in 2.55-01(c). In addition to the documents required in 2.55-01(c), institutional staff should provide the Commission with the following documents if they are available: FBI rap sheet, Report on Sentenced Offender by the United States District Judge (AO-235), Report on Convicted Prisoner by the United States Attorney (USA-792), Defense Attorney's Parole Report (AO-337), Classification Study/Current Progress Report, YCA studies, psychiatric/ psychological reports, Institutional Disciplinary Committee Report, Background

Statement of Prisoner (I-32), and letters arguing for or against parole. The "minifile" shall be used by the Commission for completion of the prehearing review, preparation of the preliminary guideline assessment worksheet and preliminary summary.

(f) Following the Commission's prehearing review, the "minifile" shall be returned to the institution with the preliminary guideline assessment worksheet. The prisoner may be given copies of the preliminary guideline assessment worksheet. Institutional staff should explain to the prisoner that the preliminary assessment is not final and that it may be modified at the hearing or during the decision making and appeals process.

(g) For an explanation of the exemptions to disclosure see 2.55-03.

(h) *Summarization of Exempt Documents.*

(1) When a document is marked nondisclosable by the originator, institutional staff shall refer the document to the originator with an explanation of the disclosure requirements of the Parole Commission and Reorganization Act and a request that the originator either permit disclosure of the document or identify the exemption to disclosure found applicable and provide a summary of the document.

(2) When institutional staff finds that a document in the institutional file, although not marked nondisclosable, falls within one of the exemptions to disclosure, institutional staff should identify the exemption to disclosure found applicable and prepare a summary of the document or if the document is complex or difficult to summarize, institutional staff should refer the document to the originator with an explanation of the disclosure requirements of the Parole Commission and Reorganization Act and request that the originator identify the exemption to disclose found applicable and provide a summary of the document.

(3) Summarization of adverse incident reports and supporting documents will be facilitated by ensuring that the IDC report adequately summarizes the facts resulting in the IDC actions. This report will be deemed to be the legally required summary of any nondisclosable document that was relied upon by the IDC.

■ 2.55-02. *Processing Disclosure Requests - Regional File.*

(a) If the prisoner makes a timely request for disclosure of documents in the Regional Office, the disclosure specialist should ensure that disclosure is made 30 days prior to the hearing. All prehearing disclosure requests shall be handled on a priority basis and take precedence over disclosure requests submitted under §2.56.

(b) The disclosure specialist should refer the prisoner to his institutional file for disclosure of documents in the regional file which are copies of documents already in the institutional file.

(c) For documents in the regional file not available to the prisoner through inspection of his institutional file, the disclosure specialist should process the request by sending copies of all disclosable documents and summaries of nondisclosable documents with a brief cover letter to institutional staff for disclosure to the prisoner. This letter shall inform the prisoner that he is being provided disclosure of all information available as of the date of the disclosure response and any document received thereafter but before the hearing will be sent to institutional staff for inclusion in the prisoner's institutional file for disclosure.

(d) The scope of prehearing disclosure is limited to documents relied on by the Commission in making a parole determination. Therefore, only source documents are required by the disclosure (e.g., documents from government official giving description of offense, letter from public arguing for or against parole). Distillations of source documents such as the prehearing assessment, or hearing summaries, do not fall within the scope of prehearing disclosure and need not be disclosed.

(e) For an explanation of the exemptions to disclosure see 2.55-03.

(f) *Summarizing Exempt Documents.*

(1) When a document is marked nondisclosable by the originator, the disclosure specialist should refer the document to the originator with an explanation of the disclosure requirements of the Parole Commission and Reorganization Act and a request that the originator either permit disclosure of the document or identify the exemption to disclosure found applicable and provide a summary of the document.

(2) When the disclosure specialist finds that a document in the regional office file, although not marked nondisclosable, falls within one of the exceptions to disclosure, the disclosure specialist should identify the exemption to disclosure found applicable and prepare a summary of the document or if the document is complex or difficult to summarize, the disclosure specialist should refer the document to the originator with an explanation of the disclosure requirements of the Parole Commission and Reorganization Act and request that the originator identify the exemption to disclosure found applicable and provide a summary of the documents.

(g) *Recording Disclosure.* At the hearing, the hearing examiners shall review Form I-24 with the prisoner. If the prisoner has requested either disclosure of his institutional file and/or his regional file and disclosure has been provided, the examiners will ensure that the prisoner has completed that section of Form I-24 indicating that he has reviewed the requested material.

(h) *Waivers of Disclosure.* If the prisoner requests prehearing disclosure and has not been provided disclosure or was provided disclosure less than 30 days before the hearing, he should be offered the opportunity at his hearing by the examiners to waive disclosure by completing the waiver section of Form I-24. Even if the prisoner has had timely disclosure of the majority of the requested information, if any documents have been provided less than 30 days before the hearing, the examiner panel should give the prisoner the opportunity to complete the waiver. If the prisoner decides not to waive timely prehearing disclosure, the panel should continue the hearing to the end of the docket or for the next docket to give the prisoner adequate time to review the material. If a continuance is requested, care should be taken by the examiners and institutional staff to provide timely disclosure so that the continuance does not extend beyond the next hearing docket. Referrals of documents to the disclosure specialist should be made when necessary to prepare the documents for pre-hearing disclosure.

(i) *Disclosure at Statutory Interim Hearing.* Since at interim hearings the Commission only considers information concerning significant developments or changes in the prisoner's status since the last hearing, and such information is normally contained in the progress report available in the institutional file, most requests to the regional office for disclosure prior to the interim hearing can be answered by referring the prisoner to the institutional file. If disclosure of the regional file is requested and there is information in the regional file concerning significant developments or changes since the last hearing and the document containing this information is not obviously in the institutional file, that information should be disclosed in conformance with this section.

(j) *Disclosure at 15-Year Reconsideration Hearing.* Requests for disclosure of documents contained in the regional office file prior to a 15-year reconsideration hearing should be handled in the same manner as requests for prehearing disclosure at an initial hearing.

■ 2.55-03. *Exempting Material From Disclosure.*

(a) As noted in 28 C.F.R. §2.55(c), a document, or portion thereof, may be withheld from disclosure if it contains:

(1) *Diagnostic opinions, which if known to the prisoner, could lead to a serious disruption of his institutional program.* The term "diagnostic opinions" is broadly defined to include not only medical, psychiatric, or psychological studies, but also general evaluations of a prisoner or parolee's progress or history by one other than a health professional; for example, a probation officer or case-manager. These evaluations may commonly be found in supervision reports of U.S. Probation Officers (Parole Form F-3), Commission hearing summaries, and regional or national staff memoranda regarding a prisoner's administrative appeal. The mere fact that something is characterized as a recommendation, however, does not warrant its being withheld.

Reports from health professionals, whether they are employees of the Bureau of Prisons or under contract to provide services for that agency, should be referred to the Bureau for processing since the documents were originated by Bureau agents. Letters or reports from a requester's private physician on the requester's physical or mental health (generally written at the behest of the requester) should be disclosed to the requester unless the document contains information conceivably not known to the requester which clearly would have a serious adverse impact upon his institutional or community adjustment (e.g., prediction of a relapse in the case of a cancer patient).

Diagnostic opinions or evaluations cannot be withheld from disclosure merely because they are negative in tone or content. In deciding whether use of the exemption is appropriate, the specialist should consider the characteristics of the requester, the content of the document, the nature and progress of the relationship between the subject of the opinion and the originator, and whether the subject has previously been confronted with the opinions of the staff member. For example, little harm normally exists in disclosing to a prisoner, whose parole has been revoked, the opinion of his former probation officer that the prisoner was progressing poorly in the community just prior to his revocation. On the other hand, it may be sensible to delete the judgment of a probation officer or institutional staff member that the subject will never make a successful adjustment to the community life when the parolee or prisoner is apparently making an attempt to participate and cooperate in community or institutional programs.

The specialist should not routinely excise general opinions of Commission staff or probation officers such as "subject has a violent and extensive prior criminal record" or that "he has a disturbing history of disciplinary infractions". Prisoners *do* have a right to be confronted with adverse opinions regarding their history, personality, or institutional behavior, except where there is a clear concern as to institutional safety and the possibility that the disclosure might seriously discourage the parolee or prisoner from engaging in further community or prison programs. Routine withholding of agency staff memoranda (or the identity of the originator) is not an acceptable practice.

(2) ***Material which would reveal a source of information obtained upon a promise of confidentiality.*** The purpose of this exemption is to protect from physical harm or real mental anguish those persons who provide information upon an express or implied promise that the information will remain confidential. The exemption primarily extends to information disseminated by undercover law enforcement officers or informants employed by law enforcement agencies, but it may also cover material given by any correctional or law enforcement officer or private party.

Such information will most often be found in warrant requests from probation officers and the documentary evidence in support of the request, e.g., police reports and witness statements. It is also found in recommendation against parole.

The exemption applies where either an express promise or an implied promise of confidentiality is deemed to exist. An implied promise exists in favor of any person described on the file as a confidential informant or undercover law enforcement officer, or where the circumstances described in the file clearly shows that the informant would rationally expect or need confidentiality. (See instructions concerning recommendations against parole).

The exemption covers not only the identity of the person giving the information, but extends to *any material which tends to identify the source of the information.*

The decision on whether or not to use this exemption depends on such factors as the nature of contents of the documents, the prospect of actual harm to the informant if the information is disclosed, and the likelihood that the requester already knows the identity of the informant.

Generally, the exemption should be used only where the information is adverse to the requester, e.g., if the parolee has left his place of residence or has returned to the use of heroin, and the informant is in a position of vulnerability (e.g., wife, child, former girlfriend). The specialist should examine the requester's past record to determine whether he has committed crimes of violence or could reasonably be expected to take retaliatory action against the informant. If it *clearly* appears from the file that the requester already knows the source of the adverse information, there is no reason for withholding the information and its source to the parolee/prisoner. For example, if file documents reflect that an informant has testified against the requester in open court, or that a family member has given adverse information regarding the requester to the media, such parties cannot legitimately expect the same information to be confidential when it is made available to the Parole Commission. However, great care should be taken in not engaging in a "guessing game" as to whether or not the requester actually knows the identity of the source if such does not clearly appear from the file itself.

The exemption may be employed to strike the names of arresting or investigative officers only where there is a clear possibility of retaliatory action (e.g., where the prisoner is a member of organized crime or a professional narcotic ring). However, the identities of any victims or witnesses mentioned in police reports and other official documents should be protected where there is an obvious expectation on their part that their identity and statements would remain confidential and a reasonable prospect of actual harm if such information were disclosed.

(3) ***Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.*** This exemption is utilized to cover those situations where sensitive information needs to be withheld from disclosure because there is a prospect of physical danger, mental anguish, or property or financial loss resulting from disclosure. Thus, the exemption may be applied where disclosure of information would constitute an unwarranted invasion of personal privacy as well as

entail a prospect of physical danger. Personal information about other inmates mentioned in a prisoner's file would be exempt under this provision. In particular, the whereabouts of other prisoners should be withheld unless it is clear that the requester already has that information.

This exemption can also be used to protect other persons who are not "confidential sources" but who are discussed in the file. Potentially embarrassing personal details about codefendants who are not in the prison system might be deleted based on this exemption, unless the information is critically important to the requester, or is already a matter of public record, in which case disclosure may be justifiable. In addition, this exemption is particularly useful to withhold information that might cause any individual a substantial loss in money, property, employment, or reputation.

The identity of Commissioners, hearing examiners, other Commission staff or law enforcement officers shall be protected under this section only where there is a clear indication of potential retaliation or danger.

■ §2.56 DISCLOSURE OF PAROLE COMMISSION REGIONAL OFFICE FILE.

(a) Procedure. Copies of disclosable records pertaining to a prisoner or parolee which are contained in the prisoner's regional office file may be obtained by that prisoner or parolee upon written request pursuant to this section. Such requests shall be answered as soon as possible in the order of their receipt. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned or to the extent permissable under the Freedom of Information Act or the Privacy Act of 1974.

(b) Scope of Disclosure. Disclosure under this section shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission which are also subject to the provisions of the Freedom of Information Act, shall be referred to the appropriate agency for a response pursuant to its regulations, unless the document has previously been prepared for disclosure pursuant to §2.55, or is fully disclosable on its face, or has been prepared by the Bureau of Prisons. Any Bureau of Prisons documents in a parole file are duplicates of records in the inmate's institutional file. Before referring these documents to the Bureau of Prisons (BOP), the Commission will ask the requester whether he also wants the BOP documents in his parole file processed.

(c) Exemptions to Disclosure. A document or segregable portion thereof may be withheld from disclosure to the extent it contains material exempt from disclosure under the Freedom of Information Act. 5 U.S.C. §552(b)(1)-(9).

(d) Specification of Documents Withheld. Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Office of Privacy and Information of the Department of Justice (Associate Attorney General).

(e) Hearing Record. Upon request by the prisoner or parolee concerned, the Commission shall make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) Costs. In any case in which billable costs exceed $8.00 (based upon the provisions and fee schedules as set forth in the Department of Justice regulation

28 C.F.R. §16.10), requesters will be notified that they will be required to reimburse the United States for such costs before copies are released.

(g) Relation to Other Provisions. Disclosure under this section is authorized by 28 C.F.R. §16.85, under which the Parole Commission is exempt from the record disclosure provisions of the Privacy Act of 1974, as well as from certain other provisions of that Act pursuant to 5 U.S.C. §552a(j)(2). Requests submitted under the Freedom of Information Act or the Privacy Act for requester's own records will be processed under this section. In no event will the Commission consider satisfaction of a request under this section, the Freedom of Information Act, or the Privacy Act of 1974, to be a prerequisite to an adequate parole hearing under 18 U.S.C. §4208 (for which disclosure is exclusively governed by §2.55 of this Part) or to the exercise of a parole applicant's appeal requests under 18 U.S.C. §4215.

Notes and Procedures

2.56-01. *Regional Office Processing of Requests Under the Freedom of Information Act (FOIA).*

(a) A prisoner or parolee may submit a request for copies of records in the regional office file folder that bears his name. Such a request must be in writing, signed by the prisoner or parolee and notarized. The request must also contain a register number and sufficient identifying data to retrieve the requested material. Any requests not containing a notarized signature or sufficient identifying data should be returned to the requester with an explanation of the requirements for making requests. A copy of any returned request should be retained in the disclosure folder along with a copy of the Commission's response. If the request comes from anyone else on behalf of the prisoner (clergyman, wife, friend, etc.), a written consent to disclosure containing prisoner or parolee's notarized signature is required. If the request is submitted by an attorney, some proof of the attorney-client relationship must exist, e.g., attorney's representation at most recent hearing, or proof that an attorney was appointed by a court to represent the requester. If such request is received without the necessary consent, the request must be returned to requester with instructions that the prisoner or parolee's notarized consent is required. In the case of Congressional requests, a copy of the prisoner or parolee's letter requesting assistance or a statement in the Congressional letter that the prisoner requested assistance will be deemed sufficient authorization. If questions arise as to the validity of the consent, refer the matter to the Office of General Counsel.

(b) If it is unlikely that the request will be answered within 10 working days, a letter acknowledging receipt of the request and explaining the delay shall be sent within ten working days of receipt of the request and the request shall be answered as soon as possible in the order of receipt. This letter should also state that receipt of the request is deemed an agreement to pay fees up to $25.00.

(c) A disclosure log must be maintained in each office to record the date the request was received, the date the request was answered, and the action taken. (See below for further information on maintaining the log.) In addition, a separate chronological file must be maintained containing a folder for each completed request. This must be done in order to keep a record of what action was taken on each request. (The contents of this file are described more fully at paragraph k below.)

(d) Upon receipt of the request in the regional office, the office disclosure specialist should note the date of receipt on the disclosure log. The specialist should then review the request, obtain the parole file for processing, and determine how much of the file needs to be copied. The following items do *not* have to be copied:

(1) Documents originated by the Bureau of Prisons. Do not process these records unless specifically asked to do by the requester. See §2.56(b) above.

(2) Any documents which fall outside the terms of the request itself. READ THE REQUEST CAREFULLY.

(3) Any other documents from an exempt source (e.g., sensitive investigative material from a Congressional Committee). However, Congressional correspondence from Congressmen on behalf of constituents should be processed for disclosure.

(4) Copies of documents which have previously been disclosed under the FOIA to the prisoner or his representative, unless the prisoner clearly states that such copies have become lost. The requester must be notified of this policy. Verification of a prisoner's claim of lost documents may be required where it would be unduly burdensome to provide the requested documents.

(5) Any material submitted by the requester or his representative (e.g., material submitted with National Appeal). The requester must be notified of this policy.

(6) Duplicates need not be copied. If it appears that there are duplicate copies of documents in the file, the disclosure specialist may destroy them. Care must be taken to make sure that only exact duplicates are destroyed.

(e) If a disclosure request is pending when a national appeal is received, the disclosure request should be taken out of turn if feasible and completed as quickly as possible. The file should then be transmitted to the National Appeals Board. If it is not feasible to complete the request the file should be sent to the National Appeals Board with a notification letter to the prisoner that the request will be completed after his/her appeal is finalized. However, if the file is already before the National Appeals Board, disclosure should be made when the file is returned to the region after the appeal is decided. In this situation, an acknowledgment letter must be sent to the prisoner explaining that his file is before the National Appeals Board and that his disclosure request will be processed as soon as possible after this appeal has been decided.

(f) If it appears from a review of the parole file that the prisoner or parolee has made a previous disclosure request, check with the central office to make sure that he has paid the fees incurred. If the fees for the previous requests have not been paid and the unpaid fees exceed $8.00, write to the prisoner or parolee and inform him that their current request will not be processed until all such fees have been paid.

(g) The specialist should make two copies of any requested documents coming from other federal agencies, bureaus and departments and refer one copy to the originating agency for a disclosure determination under cover letter unless disclosure instructions have already been received pursuant to the PCRA, or the document is clearly a disclosable one. The second copy should be kept in the disclosure folder. (See paragraph (k) below). The originating agency should be asked to respond to the requester directly. At times, it may be simpler for the specialist to check with the originating agency by phone and process the documents for disclosure as instructed. Specialist may do this where appropriate.

(h) Care must be taken in processing state and local law enforcement agency records. Documents from state or local police departments shall be withheld in their entirety under exemption (7)(D). Documents from other state and local sources, e.g., state prisons, boards of correction, etc., should be processed for disclosure using appropriate FOIA exemptions as necessary. The disclosure specialist may consult with the originating agency about questionable material.

(i) Once the copying has been completed and appropriate referrals made, the specialist should decide whether any of the remaining documents or portions thereof should be withheld from disclosure under the exemptions described below. If a portion of a document needs to be exempted, the specialist should obliterate the sensitive passage from a copy of the document for disclosure to the requester. A copy of excised document must be retained in the requester's disclosure folder with brackets around the deleted passage for future reference. Copies of documents totally withheld must also be filed in the disclosure folder.

(j) After the exempting process is finished, the specialist should complete the appropriate form letter and compute the amount owed by the prisoner. Documents or portions thereof that are withheld must also be identified, together with the applicable exemption. Summarization of withheld information does not have to be made since this requirement pertains only to disclosure under the PCRA.

(k) Once the response has been prepared, the specialist should make two copies of the response, inserting one copy in the inmate file and the second in the disclosure folder. Thus, the disclosure folder shall contain the following documents: (1) a copy of the disclosure request; (2) a copy of the response; (3) copies of all file documents withheld from disclosure; (4) copies of all file documents with excised information clearly marked; and (5) copies of referred documents and miscellaneous correspondence regarding referrals between agencies and bureaus, and other components of the Department of Justice. Fully disclosed documents need not be retained. Disclosure folders should be kept in a separate file cabinet and filed in chronological order. The specialist should then forward the response to the requester, noting the date on the disclosure log. The original request should be retained in the inmate file.

(l) The specialist shall retain on the disclosure log a record of the requests received and responses made by the regional office under this section. The specialist should also record the number of documents withheld from disclosure and the number of documents where excisions were made. Finally, the specialist should list the number and type of exemptions utilized. These records provide the information for a summary which is submitted to the General Counsel's Office annually to comply with the Department of Justice reporting requirements.

█ 2.56-02. *Exempting Material From Disclosure.*
(a) A document, or portion thereof, may be withheld from disclosure if it contains information covered by the exemptions or exclusions to disclosure found at 5 U.S.C. §552(b) and (c) of the Freedom of Information Act.

(b) Reasonably segregable non-exempt portions of a record should be released.

(c) More than one exemption or exclusion may be used if applicable.

(d) Questions concerning the use of a particular exemption or exclusion should be directed to the FOIA/PA Attorney, Office of General Counsel.

█ 2.56-03. *Exceptions to Confidentiality of Files and Special Requests.*
(a) *Routine Uses.* In performing their official duties, Commission staff may repeatedly employ records from the inmate and supervision system of records in

certain established contexts without the need for securing the consent of the file subject. Such 'routine uses' must be published in the Federal Register.

The approved routine uses currently published in the Federal Register are:

(1) The system may be used as a source for disclosure of information which is solely a matter of public record and which is traditionally released by the agency to further public understanding of its criminal justice system, including but not limited to offense, sentence data, and prospective release date.

(2) The system may be used to provide an informational source for responding to inquiries from federal inmates, their families, representatives and Congressional offices.

(3) Records from the system of records may be routinely disclosed to U.S. Probation Officers for the performance of their official duties.

(4) In the event that the U.S.P.C. is informed of a violation or suspected violation of law whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order, issued pursuant thereto.

(5) Records from this system may be disclosed to a federal, state or local agency or court if that agency or court requests information for an official purpose to which the documents appear to be relevant.

(6) A record from this system may be disclosed to a person or to persons who may be exposed to harm through contact with a particular parolee or mandatory releasee (or to persons in a position to prevent or minimize such harm), if it is deemed to be necessary to give notice that such danger exists.

(7) Lists of names of parolees and mandatory releasees entering a jurisdiction and related information may be disclosed to law enforcement agencies upon request as may be required for the protection of the public for the enforcement of parole conditions.

(8) Disclosure of U.S.P.C. Notices of Action may be made (1) by the Office of Public Affairs of the U.S. Department of Justice to the public generally, and (2) by U.S.P.C. to specific crime victims and witnesses (as those terms are used in the Victim and Witness Protection Act of 1982), from the files of prisoners whose applications for parole have been decided by the U.S.P.C. The purpose of such disclosure is to further understanding of the criminal justice system by the public and by crime victims and witnesses.

(9) Incidental disclosure of file material may be made during the course of a parole or parole revocation hearing to victims and witnesses of crime and other legitimately interested persons authorized by the U.S.P.C. to attend such hearing. Disclosure will be made to permit victims and witnesses to be fully informed, and to promote competence and integrity in the correctional process.

(10) Records which are arguably relevant to litigation in which the Parole Commission has an interest, or to the litigation defense of its present or former employees (if the Department of Justice has agreed to provide representation) may be disclosed from a current or former inmate's or parolee's file by disseminating them in proceedings before a court or tribunal at any time deemed appropriate by the government's attorney.

(11) A record from this system of records may be disclosed to a current or former criminal justice official who is a defendant in a lawsuit brought by, or which involves, an individual who is the subject of a file maintained in this system of records, provided that such litigation arises from allegations of misconduct on the part of the defendant while a criminal justice official, and that the records are arguably relevant to the matter in litigation. Such records may be disclosed to the defendant to facilitate the preparation of his or her defense.

(12) Records from this system may be disclosed to any person performing any service for the U.S.P.C. pursuant to the authority exercised by the Chairman under 18 U.S.C. §4204(b)(1) through (8), and for the purposes contemplated by that statute.

(13) A record relating to the identification and location of Human Immunodeficiency Virus (HIV)-positive parolees (those who test positive for the Acquired Immune Deficiency Syndrome virus) may be disseminated to State or local health departments where permitted by State law.

(14) Where the Commission or supervising probation office believes that a specific person is or has been exposed to a medically recognized risk from an HIV-positive parolee and has not been advised of such risk, a record relating to the identification of that parolee may be released to the parolee's physician or State or local health authorities for the purpose of determining if the physician or health authorities are willing to provide a warning to the third-party at risk and, if willing, for the purpose of providing such a warning.

(15) A record relating to the identification of an HIV-positive parolee may be disclosed to a third party where it is believed that such third party is or has been exposed to a medically recognized type of risk from an HIV-positive parolee and has not been advised of such risk. Such disclosures under this routine use would be made only where the parolee's physician or State or local health authorities are unable or unwilling to make such a warning to the third party. Such disclosures will be made discreetly and as a confidential communication.

(16) To the extent not prohibited by State law, a record relating to the identification and location of and HIV-positive parolee may be disseminated to those medical facilities, State or local health departments, community organizations or similar groups capable of providing medical help or counseling to HIV-positive parolees.

(17) A record relating to the identification of an HIV-positive parolee may be released to the United States Marshal when the Commission issues a parole violator warrant for the arrest of an HIV-positive parolee.

(18) Information permitted to be released to the news media and the public pursuant to 28 C.F.R. §50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(19) Information not otherwise required to be released pursuant to 5 U.S.C. §552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of and at the request of the individual who is the subject to the record.

(20) A record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. §2904 and §2906.

Routine use disclosures are, in effect, responses to third party requests for information. Disclosures under this section may be made by the Regional Office, however, after consulting with the FOIA officer in the Central Office. Whenever the Commission staff discloses file material outside of the Department of Justice pursuant to a routine use, the circumstances and extent to the dissemination must be recorded for the inmate/supervision file of the particular prisoner/parolee.

A routine use meriting special attention is found at 28 C.F.R. §2.37(a) and the accompanying procedures. This rule permits third parties to be warned of a particular danger a parolee may pose to them. It does not *require* dissemination of the parolee's criminal record and background to the general public. The duty to disclose only arises when the probation officer or staff member becomes aware of a special relationship, e.g., employer-employee, between the third-party and the parolee. If from circumstances of the relationship, a prospect of harm to the third party can be reasonably foreseen, disclosure of the possibility of such harm should be confidentially made to the third party. A few examples may help to clarify this routine use:

> *Example 1:* Parolee W is seeking a job as a janitor at an apartment building. The building houses a number of apartments occupied by single women. Parolee W has a prior record listing two convictions for rape and aggravated assault. In this case, disclosure of the prospective employer should be made.
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> *Example 2:* Parolee X is seeking employment as a bookkeeper at a local bank. Parolee X just completed serving a three year term for embezzling $120,000 from a savings and loan association. In this case, disclosure of the circumstances of Parolee X's embezzlement should be made to the bank personnel officer.
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> *Example 3:* Parolee Y is attempting to purchase a house in a new residential development. The agent for the real estate company in charge of selling the properties calls the probation office for information on Parolee Y, after receiving information that Parolee Y has a prior record. Parolee Y has suffered one conviction for possession of $1,000 worth of forged money orders and was arrested once for possession of less than an ounce of marijuana. From these facts, it does not appear Parolee Y poses any significant risk of harm to the public. Therefore, disclosure of the of the parolee's background should not be made.

These examples for §2.37(a) are not all-inclusive, but they help to indicate the points with which probation officers and staff should be concerned in this disclosure situation. It should be noted that the disclosure may be required even without a request from member of the public for the information. The Regional Commissioner may delegate the duty to approve disclosure of file information under this routine use to the Regional Administrator or Case Analysts. Requests for disclosure, as well as subsequent approvals, may be handled telephonically as long as the request and approval is carefully noted for the record. The information disseminated to the third party should also be accounted for in the inmate/supervision file by the probation officer or staff member. If a question arises as to the propriety of approval for a request for disclosure under this regulation, the probation officer or staff member should feel free to call the Office of General Counsel for assistance.

(b) *Congressional Correspondence/Privacy Act.* Please review the Commission's Procedures Manual at §2.22.

(c) *Subpoenas from Federal, State and Local Courts.* When a federal probation officer or Commission staff member receives a subpoena from a federal, state, or local court for the production of file material or the oral disclosure of information on a prisoner or parolee, he or she should consult the General Counsel's Office as soon as possible for appropriate instruction. Disclosure of such information is regulated by the Department of Justice rules found at 28 C.F.R. §16.21-16.29.

Before information can be divulged, the Chairman of the Commission must consent to the dissemination. The procedure need not be followed where an agent of the Department of Justice, *e.g.*, Assistant U.S. Attorney, is subpoenaing the information since the disclosure is essentially "in-house" and covered as a routine use under the Privacy Act. In the event that permission is not granted, persons to whom such subpoenas are directed should be advised to contact the local United States Attorney's Office to secure its assistance in defending that position.

(d) *Requests from Law Enforcement Authorities.* The Privacy Act specifically allows for the unconsented disclosure of file material (including photocopies) concerning a prisoner or parolee to any federal, state, or local government agency for a criminal or civil law enforcement activity if the head of the agency (or a person who can act for the agency head) makes a written request to the Commission specifying the material desired and the law enforcement activity for which the records are sought. 5 U.S.C. §552a(b)(7). Routine use (d) extends this exception for foreign law enforcement agencies. Thus, agencies as different as a state bureau of investigation, a county sheriff's office, a metropolitan police department, the Internal Revenue Service, a state department of insurance, the local liquor control board or the Royal Canadian Mounted Police may all present valid requests for information under this section.

On occasion, a request which on its face may fall within this exception should still not be complied with unless good cause is shown for the disclosure. For example, a domestic relations agency may seek the file information to compel a parolee to pay child support, which would be a law enforcement activity, especially since continued non-payment may result in criminal prosecution. In this case, disclosure would be appropriate. Yet, if the same agency seeks the information to resolve a child custody dispute, the case probably does not involve law enforcement, but civil litigation regarding the rights of the parents over the child. Routine use (3) would be applicable instead. If in doubt about the proprietary of disclosure in any case, staff should not make such decisions without the assistance or advice of the General Counsel's Office.

Finally, Commission staff should require the requester to be specific about the type of information sought and the purpose of the request. Requests from governmental agents who apparently have supervisory authority, such as "chief of homicide division", rather than the actual head of the agency, i.e., chief of police, may be responded to without further correspondence on the issue of proper authorization. Staff should divulge only that information on which reasonably satisfies the request of the law enforcement agency. Any disclosure made to the law enforcement authority must be documented for the file in order to comply with the accountability requirements of the Privacy Act.

(e) *Public Sector Information Disclosure to Members of the Press.* Information deemed to be the "public sector" can be disclosed to third parties without the consent of the file subject, unless a "protection" case where minimal or no disclosure is made. However, such disclosure should normally be made only to persons who demonstrate a need to know the information or who occupy a special position with respect to the subject of the file. Such persons include, but are not limited to, members of the press, the prisoner/parolee's family, law enforcement officers, and prospective employers. Public sector information encompasses the following data: (1) sentence data on the Bureau's Sentence Computation Record (BP-5); (2) date(s) of parole hearing(s); and (3) the decision(s) rendered by the Commission after agency proceedings including dates of continuances and presumptive parole dates.

Reasons for parole denial or revocation are not considered public sector information. If the requester desires to know information beyond this limited dissemination, the disclosure must fit a Privacy Act exception, a routine use or be specifically consented to by the inmate or person on supervision.

Press inquiries or those from other media on prisoners who are considered under the Commission's original jurisdiction voting procedure, 28 C.F.R. Section 2.17 and §2.27, will generally be handled by the Department of Justice, Office of Public Information. This office can also be utilized as a resource for Commission staff when they encounter a particular problem with a news reporter's request for information on a prisoner or parolee, regardless of whether or not the file subject is an original jurisdiction case. It is recommended that the Office of Public Information be consulted and the disclosure be made or its refusal be communicated to the media through that office in any but the most routine situations.

■ §2.57 SPECIAL PAROLE TERMS.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. Sections 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence; or if the prisoner is released without supervision, commences upon such release.

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Federal Prison System.

(c) Should a parolee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he may be returned as a violator under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a parole violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in §2.52, and subject to reparole or mandatory release under the Special Parole Term. Notwithstanding the provisions of §2.52(c), a special parole term violator whose parole is revoked shall receive no credit for time spent on parole pursuant to 21 U.S.C. §841(c).

(d) If a prisoner is reparoled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the prisoner is mandatorily released under the revoked "Special Parole Term" a certificate of mandatory release to Special Parole Term will be issued by the Federal Prison System.

(e) If regular parole or mandatory release supervision is terminated under §2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

Notes and Procedures

■ 2.57-01. *Special Parole Term Procedure.*
(a) Any special conditions imposed during parole or mandatory release shall also apply to the special parole term and shall be placed on the special parole term certificate. The Special Parole Term will be treated as aggregated with the regular parole or mandatory release term for purposes of modification or removal of conditions or special conditions.

(b) A person serving a special parole term shall be considered the same as a regular parolee. This includes the possibility of termination from supervision if merited, as well as the possibility of relocating outside the United States if justified. However, the special parole term will be treated as a separate consecutive term (without credit for any time spent on any regular parole term) for purposes of the (1) early termination guidelines and (2) the five year hearing requirement in reference to termination of jurisdiction.

(c) The special parole term is not applicable to sentences under the FJDA, YCA, and NARA. In a "split sentence" situation, the special parole term is considered to be part of the sentence that was suspended and this will not take effect unless probation is revoked.

■ §2.58 PRIOR ORDERS.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

■ §2.59 ABSENCE OF HEARING EXAMINER.

In the absence of a hearing examiner, a Regional Commissioner may exercise the authority delegated to hearing examiners in §2.23.

■ §2.60 SUPERIOR PROGRAM ACHIEVEMENT.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner's entire term shall be as set forth in the following schedule. It is the intent of the Commission that the maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given [for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)]. Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

(e) Schedule of Permissible Reductions for Superior Program Achievement.

Total months required by original presumptive date:	Permissible reduction
14 months or less	Not applicable.
15 to 22 months	Up to 1 month.
23 to 30 months	Up to 2 months.
31 to 36 months	Up to 3 months.
37 to 42 months	Up to 4 months.
43 to 48 months	Up to 5 months.
49 to 54 months	Up to 6 months.
55 to 60 months	Up to 7 months.
61 to 66 months	Up to 8 months.
67 to 72 months	Up to 9 months.
73 to 78 months	Up to 10 months.
79 to 84 months	Up to 11 months.
85 to 90 months	Up to 12 months.
91 plus months	Up to 13 months.

Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.

(f) For cases originally continued to expiration, the statutory good time date (calculated under 18 U.S.C. 4161) will be used for computing the maximum reduction permissible and as the base from which the reduction is to be subtracted for prisoners serving sentences of less than five years. For prisoners serving sentences of five years or more, the two-thirds date (calculated pursuant to 18 U.S.C. 4206(d)) will be used for these purposes. If the prisoner's presumptive release date has been further reduced by extra good time (18 U.S.C. 4162) and such reduction equals or exceeds the reduction applicable for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

Notes and Procedures

2.60-01. *Background.*

(a) The objective of the superior program achievement provision is to authorize a small but meaningful reward for prisoners who choose to spend their prison time in an exceptionally constructive manner. The normal maximum reward is purposefully kept small to reduce the likelihood of prisoners participating superficially in programs merely to impress the Parole Commission, and so as not to reintroduce the gross indeterminacy that the presumptive date system was designed to eliminate. The granting of a reward for superior program achievement is not mandatory; and it is the intent of the Commission that the granting of such award not threaten the public safety.

(b) A reward for superior program achievement may be considered in either of the following situations:

(1) Where the program achievement is deemed likely to enhance the prisoner's ability to lead a law abiding life (for example, where there has been a substantial enhancement in educational or vocational level, or a sustained improvement in work habits); or

(2) Where the conduct has had a significant positive impact upon the operation of the institution or has provided an outstanding example of the constructive use of prison time.

■ 2.60-02. *Application.*

(a) The following procedures apply to all types of considerations: Initial hearings (where the prisoner has been in custody for the required period), interim hearings, pre-release reviews, etc.

(b) Whenever credit for superior program achievement is given, the following wording will be added to the Notice of Action: "The above decision includes a [ ] month credit for superior program achievement, specifically: *(describe the nature, extent, and duration of superior program achievement)*".

(c) For purposes of applying this rule, the original presumptive date refers to the number of months in custody which would be required without consideration of superior program achievement.

> *Example A* - Initial Hearing - Calculate the number of months to be served without reference to superior program achievement. If 45 months would be required, the maximum permissible reduction for superior program achievement (during the entire term) is 5 months. Note: Superior program achievement will only be considered at initial hearings if the prisoner has at least nine months in custody.
>
> *Example B* - Interim and Pre-Release Reviews - Calculate the number of months in custody required by the original presumptive date; check to see if the allowable credit for superior program achievement has already been awarded.

(d) For cases originally continued to expiration, the statutory good time date will be used both for computing the maximum reduction permissible and as the base from which the reduction is to be subtracted for sentences of less than five years. For sentences of five years or more, the two-thirds date will be used for these purposes. If the prisoner's date has been further reduced by extra good time and such reduction equals or exceeds the reduction permissible for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

> *Example C* - Prisoner's statutory good time date occurs at 37 months. The permissible reduction for superior program achievement is up to 4 months. The prisoner has earned 4 or more months extra good time; reduction for superior program achievement is not applicable.

(e) This rule provides criteria and standards for consideration of superior program achievement. It does not in any way affect the voting quorums for Commission actions required under §2.17, §2.23, §2.24, §2.26, §2.27.

■ §2.61 QUALIFICATIONS OF REPRESENTATIVES.

(a) A prisoner or parolee may select any person to appear as his or her representative in any proceeding, and any representative will be deemed qualified unless specifically disqualified under paragraphs (b) or (c) of this section. However, an examiner or examiner panel may bar an otherwise qualified

representative from participating in a particular hearing, provided good cause for such action is found and stated in the record (e.g., willfully disruptive conduct during the hearing by repeated interruption or use of abusive language). In certain situations, good cause may be found in advance of the hearing (e.g., that the proposed representative is a prisoner in disciplinary segregation whose presence at the hearing would pose a risk to security, or has a personal interest in the case which appears to conflict with that of the parole applicant).

(b) The Commission may disqualify any representative from appearing before it for up to a five-year period if, following a hearing, the Commission finds that the representative has engaged in any conduct which demonstrates a clear lack of personal integrity or fitness to practice before the Commission (including, but not limited to, deliberate or repetitive provision of false information to the Commission, or solicitation of clients on the strength of purported personal influence with U.S. Parole Commissioners or staff).

(c)(1) In addition to the prohibitions contained in 18 U.S.C. §207, no former employee of any Federal criminal justice agency (in either the Executive or Judicial Branch of the Government) with the exception of the Federal Defender Service, shall be qualified to act as a representative for hire in any case before the Commission for one year following termination of Federal employment. However, such persons may be employed by, or perform consulting services for, a private firm or other organization providing representation before the agency, to the extent that such employment or service does not include the performance of any representational act before the Commission.

(2) No prisoner or parolee may serve as a representative before the Commission, at the hire of individual clients, in any case.

■ §2.62 PRISONERS TRANSFERRED PURSUANT TO TREATY.

(a) Applicability and Jurisdiction. Prisoners transferred by treaty who committed their offenses on or after November 1, 1987 shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106(A), as amended by the Anti-Drug Abuse Act of 1988. Prisoners transferred by treaty who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to procedures found at 28 C.F.R. §2.13. The Commission's jurisdiction in either case is the limit of the sentence imposed by the foreign court, and the Commission shall treat the foreign conviction as though it were a lawful conviction in a United States District Court.

(b) Interview upon entry. Following the transferee's entry into the United States, the transferee shall, without unnecessary delay, be interviewed by a United States Probation Officer who shall inform the transferee of his rights under this regulation. The transferee shall be given the appropriate forms for appointment of counsel pursuant to 18 U.S.C. 3006(A) at the interview if appointment of counsel is requested.

(c) Postsentence report. A postsentence investigation report, which shall include an estimated sentencing classification and sentencing guideline range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the postsentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his counsel (if any). Confidential material contained in the postsentence investigation report may be withheld pursuant to the procedures of 18 U.S.C. 4208(c).

(d) Opportunity to object. The transferee (or counsel) shall have thirty calendar days after disclosure of the postsentence report to transmit any objections to the report he may have, in writing, to the probation officer. The probation officer shall transmit a copy of all documents relating to any objection to the postsentence report, including any addendum to the report, to the Commission prior to the hearing. The Commission shall review the report and may request that a corrected report or additional information be submitted by the probation officer. Any disputes of fact or disputes concerning the application of the sentencing guidelines that may remain following the probation officer's preparation of the addendum (if any) to the postsentence report shall be resolved at the Special Transferee Hearing.

(e) Special Transferee Hearing. A special transferee hearing shall be conducted within 60 days from the transferee's entry into the United States, or as soon as practicable following completion of the postsentence investigation report along with any corrections or addendum to that report and appointment of counsel for an indigent transferee.

(f) Representation. The transferee shall have the opportunity to be represented by counsel (retained by the transferee or, if financially unable to retain counsel, counsel shall be provided pursuant to 18 U.S.C. 3006(A)), at all stages of the proceeding set forth in this section. The transferee may select a non-lawyer representative as provided in 28 C.F.R. §2.61.

(g) Decision-Making Criteria. The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court.

(h) Hearing procedures. Special transferee hearings shall be conducted by a panel of examiners. Each special transferee hearing shall be recorded by a certified court reporter and the proceedings shall be transcribed if the determination of the Commission is appealed. The following procedures shall apply at a special transferee proceeding, unless waived by the transferee:

(1) The examiner panel shall inquire whether the transferee and his counsel have had an opportunity to read and discuss the postsentence investigation report and whether the transferee is prepared to go forward with the hearing. If not, the transferee shall be given the opportunity to continue the hearing.

(2) The transferee shall have an opportunity to present documentary evidence and to testify on his own behalf.

(3) Oral testimony of interested parties may be taken with prior advance permission of the Regional Commissioner.

(4) The transferee and his counsel shall be afforded the opportunity to comment upon the guideline estimate contained in the postsentence investigation report (and the addendum, if any), and to present arguments and information relating to the Commission's final guideline determination and decision.

(5) Disputes of material fact shall be resolved by a preponderance of the evidence, with written recommended findings by the panel unless the panel determines, on the record, not to take the controverted matter into account.

(6) The transferee shall be notified of the panel's recommended findings of fact, and its recommended determination and reasons therefore, at the conclusion of the hearing.

(i) Final Decision. The Commission shall render a decision as soon as practicable and without unnecessary delay. The decision shall set a release date and a period and conditions of supervised release. The Commission may, in its discretion, defer a decision and order a rehearing, provided that a statement of the reason(s) for ordering a rehearing is issued to the transferee and his counsel (if any). The Commission's final decision shall be supported by a statement of reasons explaining:

(1) the similar offense selected as the basis for the Commission's decision;

(2) the basis for the guideline range applied;

(3) the reason for making a release determination at a particular point within the range if the range exceeds twenty-four months, or the special reason for departing from the range if applicable. If the release determination is within a range that does not exceed twenty-four months, the Commission need not identify the reason for making its determination at a particular point within that range;

(4) the conditions of any period of supervised release imposed. The Commission presumes that the recommended conditions of supervised release provided in Section 5B1.4(a) of the sentencing guidelines are reasonably necessary in every case, and those conditions shall be imposed unless the Commission finds otherwise. The Commission may also impose special conditions of supervised release whenever deemed reasonably necessary in an individual case.

(j) Appeal. The transferee shall be advised of his right to appeal the decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined.

Notes and Procedures

2.62-01. In General.

(a) After receipt of the postsentence report and any addenda (including defense attorney objections) an initial pre-hearing review of the case will be completed as expeditiously as possible by regional office personnel. The reviewer shall prepare a preliminary sentencing classification and sentencing guideline range as well as a written pre-hearing review summary. A copy shall be sent to the prisoner, and the prisoner's attorney if applicable.

(b) If the pre-reviewer needs additional information a request shall be sent to the probation officer with copies to the prisoner and attorney if applicable. The probation officer should be asked to send a copy of his response to the prisoner and attorney if applicable.

(c) After completion of the pre-hearing review the case shall be scheduled for a special transferee hearing.

(d) At the completion of the hearing the panel will prepare a summary of the case which will be forwarded to the Regional Office. During the hearing the panel will resolve all contested issues and complete a "Notice of Action Worksheet/Transfer Treaty Determination".

(e) The Regional Commissioner will make the final decision. Necessary changes will be made to the Notice of Action Worksheet to convert it to a TREATY DETERMINATION pursuant to 18 U.S.C. §4106A.

(f) If the Regional Commissioner substantially disagrees with the panel's recommendation a rehearing should be scheduled. The transferee, and attorney, should be provided with written notice of the hearing and cause for said hearing. However, if scheduling such a hearing will delay an imminent release, recognizing good-time credits, a decision should be made absent a rehearing.

(g) Distribution of TREATY DETERMINATIONS
    (1) U.S. Parole Commission file
    (2) Prisoner/transferee
    (3) Institution
    (4) Attorney
    (5) Case Operations & Program Development, Central Office

(h) Institutional staff will be asked to have the transferee sign an acknowledgment of receipt of the Determination and any applicable conditions of supervised release. This acknowledgment should be returned to the regional office and made a part of the case file.

(i) Approximately 2 months after issuance of the Determination Order regional office staff should secure a copy of the Bureau of Prisons sentence computation sheet from the Sentry computer system. This document should be made a part of the file.

(j) After the sentence computation sheet has been secured, unless an appeal is pending, the case file should be transferred to the Probation Office that prepared the postsentence report.

(k) A separate log should be kept by each regional office on these cases. The cases will be coded in the Central Office using the Treaty Determination order forwarded under paragraph (g) above.

■ 2.62-02. Retroactivity. Any prisoners transferred pursuant to the Prisoner Transfer Treaty who committed their offenses on or after November 1, 1987 and were inadvertently heard under the Commission guidelines shall receive without delay a new hearing under the special transferee hearing procedures. The previous decision rendered in the case based on parole guidelines shall be voided.

■ 2.62-03. Waiver of Hearing. A prisoner who has already satisfied the minimum time required to be served under the sentencing guidelines as recommended by the probation officer in the postsentence report may waive the right to a hearing on a form (Special Transferee Form 3) provided for that purpose. When a prisoner waives the hearing and applies for a decision on the record, the Commission may either set a release date within 60 days of receiving the waiver form or schedule a hearing. If the Commission decides not to set a release date on the record, the case analyst shall promptly inform the transferee of the decision to conduct an in-person hearing.

■ §2.63 REWARDING ASSISTANCE IN THE PROSECUTION OF OTHER OFFENDERS; CRITERIA AND GUIDELINES.

(a) The Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders.

(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.

(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation. However, no promises, express or implied, as to a Parole Commission reward shall be given any weight in evaluating a recommendation for leniency.

(3) The release of the prisoner must not threaten the public safety.

(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the actual date of the expiration of the sentence. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

Notes and Procedures

2.63-01. *Application.*
(a) The following methodology is to be used in applying this provision:

(1) Determine how much (if any) reduction is warranted. The following are among the factors that may be considered:

(A) The extent and quality of the assistance (e.g., the extent to which the assistance has been an important factor in the prosecution of a serious offender, has resulted in the saving of life or the prevention of a serious offense, has prevented a potentially serious institutional disturbance, etc.).

(B) Whether the information provided places the prisoner (or his family) at substantial risk of retaliation.

(C) Whether information provided is timely, complete, and thorough and not provided in a piecemeal fashion.

(D) Whether information provided would have been available to law enforcement officials without the prisoner's cooperation.

(2) If the reviewer determines that exceptional circumstances warrant a reward of more than one year, the specific circumstances are to be stated (e.g., an offender continues to testify against an organized crime figure after an attempt on his life has been made; an offender saved the life of a correctional officer during a disturbance).

(3) Suggested Wording for Hearing Summary: "The panel believes the nature and extent of the assistance provided (described earlier in the summary) warrants a ___ month reward and that this reward will not threaten public safety. Therefore, a presumptive parole date at ___ months is recommended."

(4) The reward granted is to take into account the total reward contemplated by the Commission whether the cooperation is given at one time or over a period of time.

(5) 'Actual date of the expiration of the sentence' means the mandatory release date less good time, i.e. the date the inmate will actually be released from prison.

§2.64 SENTENCING REFORM ACT.

(a) It is the Commission's interpretation of §235(b)(3) of the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984), as amended by the Sentencing Act of 1987, that persons who will be incarcerated at the expiration of five years after the effective date of the Sentencing Reform Act, and whose sentences provide for parole eligibility shall, before the expiration of that five-year period, be given release dates by the Commission pursuant to 18 U.S.C. §4206. Thus, the Commission may continue to make decisions outside of its guideline ranges where appropriate.

(b) The release dates required by §235(b)(3) need not be set any earlier than the time required to allow an administrative appeal within the five-year period; i.e., three to six months before the end of that period.

(c) §235(b)(3) does not apply to persons who will be on parole or mandatory release supervision at the expiration of the five-year period.

(d) §235(b)(3) does not change the parole eligibility date established by a prisoner's sentence and does not confer parole eligibility on prisoners whose sentences do not provide any eligibility for parole.

§2.65 YOUTH CORRECTIONS ACT.

(a) The provisions of this section only apply to offenders serving sentences imposed under former 18 U.S.C. §5010(b) and (c).

(b) Approval of Program Plans.

(1) The criteria outlined in paragraph (d) (on determining successful response to treatment) shall be considered in determining whether a proposed program plan will effectively reduce the risk to the public welfare presented by the YCA prisoner's release.

(2) If the prisoner's program plan has not already been approved by the Commission, the examiner panel shall be given the plan at a hearing for review and approval. The examiners shall indicate their approval or disapproval of the program plan (with relevant comments and recommendations) in the hearing summary.

(3) If the examiners consider the plan inadequate, they will discuss their concerns with institutional staff. If there is still a disagreement on the plan, the case will be referred by the Commission's regional administrator to the Bureau's regional correctional programs administrator with the recommended changes. Unresolved disputes concerning the adequacy of the program plan shall be decided by the Regional Commissioner and the Regional Director of the Bureau of Prisons. The Regional Commissioner shall render the final decision on approving or disapproving each program plan on behalf of the Commission. Once the program plan has been approved, subsequent approvals are not necessary, unless significant modifications are made by institutional staff.

(c) Parole Hearings and Progress Reports.

(1) Initial hearings shall be conducted in accordance with §2.12 and §2.13. The examiner panel will discuss with the prisoner and a staff member who is knowledgeable about the case the program plan and the importance of good conduct and program participation in setting the release date.

(2) An interim hearing must be scheduled for a YCA prisoner every six months. In addition, within 60 days of receipt of any special progress report from the warden recommending parole, the prisoner shall be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. An institutional staff member who has personal knowledge of the case shall be present to assist the examiners in their evaluation of the prisoner's conduct, program performance, and response to treatment.

(3) After any interim hearing or review on the record, the Commission may advance the presumptive release date, let the date stand, or retard/rescind the date if the prisoner has committed disciplinary infractions or new criminal conduct.

(4) An interim hearing will not be scheduled after receipt of a progress report, if the Commission decides on the record to parole the prisoner as soon as a release plan is approved (normally within 60 days of the decision).

(5) The institution shall send a progress report to the Commission: (i) no more than 60 days before each interim hearing; (ii) upon determining that a prisoner should be recommended for parole; and (iii) before a presumptive parole date to allow for the pre-release record review under §2.14(b). The warden may forward progress reports to the Commission at other times in his discretion. Progress reports shall also be sent to the Commission every six months for prisoners who have waived interim hearings to enable the Commission to verify that these prisoners have satisfied the conditions of securing their release on an alternate parole date granted under the former YCA compliance plan (i.e., completion of the program plan) or the normal presumptive release date (i.e., obedience to institutional rules).

(6) For prisoners granted earlier parole dates under former compliance plans in Watts v. Belaski: A prisoner may waive interim hearings under this section, in which case he would retain an alternate parole date previously granted to him or a presumptive parole date granted as a result of a finding that the prisoner had responded to treatment. A prisoner who waives an interim hearing under this section may, at any time, re-apply for the hearing and be considered under this section in accordance with the application/waiver provisions at §2.11. The Commission will not review the program plans for prisoners who waive interim hearings pursuant to this paragraph, unless the prisoner subsequently is scheduled for a hearing to consider new criminal conduct or a rule infraction and a modification of the original program plan appears warranted due to the prisoner's new criminal offense or infraction. If the prisoner is scheduled for a hearing that may not be waived (e.g., an interim hearing where there has been a finding of a disciplinary infraction since the last hearing, or any hearing scheduled pursuant to §2.20(b) through (f), this section will be applied at such hearing.

(7) Warden's Recommendation. Based on the completion of the program plan by the prisoner, and the quality of effort demonstrated by the prisoner in completing the plan, the warden will recommend to the Commission a conditional release date for its consideration. This recommendation shall be accompanied by a report on the prisoner's participation and level of achievement in different aspects of his program.

(d) Criteria For Finding Successful Response to Treatment Programs.

(1) In determining whether a prisoner has successfully "responded to treatment" the Commission shall examine whether the prisoner has shown that he has received sufficient corrective training, counseling, education, and therapy that the public would not be endangered by his release. See former 18 U.S.C. §5006(f) (definition

of "treatment" under the YCA). The Bureau of Prisons shall assist the Commission in this determination by informing the Commission when the prisoner has completed his program plan and by advising the Commission of the quality of effort demonstrated by the prisoner in completing the plan.

(2) In determining the extent of a prisoner's positive response to treatment, the Commission shall examine the degree by which the prisoner has increased the likelihood that his release would not jeopardize the public welfare through his program performance and conduct record. See 18 U.S.C. §4206(a)(2). The starting point for the analysis of a prisoner's response to treatment will be the original parole prognosis reached by the use of the salient factor score, and an evaluation of the nature of the prisoner's prior criminal history and other characteristics of the prisoner. The nature of the current offense may also be considered in determining the risk to the public welfare presented by the prisoner's release. The Commission will then proceed to evaluate whether the prisoner's program participation and institutional conduct has improved the original risk prognosis and evidences an alteration of his value system, including an understanding of the wrongfulness of his past criminal conduct. For those prisoners who have exhibited serious or violent criminal behavior, the Commission will exercise more caution in making a finding that the prisoner has responded to treatment to the degree that he should be released.

(3) With regard to program performance, significant weight will be given to the following factors in determining a prisoner's response to treatment. This is not intended as an exhaustive list.

(i) Vocational Training. Where the inmate originally had few job skills, the acquisition of a marketable job skill through vocational training or an apprenticeship program.

(ii) Education. Participation in educational programs to acquire an educational level at least the level of a high school graduate.

(iii) Psychological Counseling and Therapy. Where the prisoner's behavior has shown that he may be affected by personality disorders or a mental illness that has hampered his ability to lead a law-abiding life, or that he may otherwise benefit from such programs, participation in psychological and/or other specialized programs which lead to a judgment by the therapist/counselor that the prisoner has significantly improved his ability to obey the law and favorably modified his value system. Participation in these programs will normally be required for a significant advancement of the presumptive release date for a prisoner who has either committed or attempted a crime of violence.

(iv) Drug/Alcohol Abuse Programs. Where the prisoner has a history of drug/alcohol abuse, participation in a drug/alcohol abuse program which leads to the judgment by the therapist/counselor that there is a significant likelihood that the prisoner will not revert to drug/alcohol abuse and has thereby significantly improved his ability to obey the law.

(v) Work. Assuming the prisoner is physically and mentally able to do so and is not otherwise engaged in an institutional activity which prevents him from obtaining a job, participation in a job on a regular basis so as to demonstrate a stable life pattern and a favorable modification of his value system.

(4) Prison misconduct (i.e., disobedience to institutional rules, escape) and new criminal conduct in the institution shall be considered in the decision as to whether (or to what degree) a prisoner has successfully responded to treatment.

The rescission guidelines of §2.36 shall be used in retarding or rescinding the original presumptive release date set according to the guidelines and the factors described in 18 U.S.C. §4206. If the original presumptive date has been advanced based on response to treatment, the rescission guidelines may also be used to retard or rescind the new date to maintain institutional discipline, if the misconduct is not deemed serious enough to affect the decision that the prisoner has responded to treatment. But misconduct subsequent to the advancement of a release date based on a finding of response to treatment may also result in a reversal of that finding and the cancellation of any advancement of the original presumptive release date.

(e) Setting The Parole Date (Balancing §4206 Factors with Response to Treatment). At any hearing or review on the record, the presumptive release date may be advanced if it is determined that the prisoner has responded to a sufficient degree to his treatment programs. The amount of the advancement should be proportional to the degree of response evidenced by the prisoner. In making the advancement, no rule restricting the amount of the reduction -- whether based on the guidelines (§2.20) or the rule on superior program achievement (§2.60) -- shall be used. The decision will be the result of a case-by-case evaluation in which response to treatment programs, the seriousness of the offense, and the original parole prognosis are all weighed by the Commission with no one factor capable of excluding all others.

(f) Parole Violators. Parole violators returned to an institution following a local revocation hearing shall normally be considered for reparole under this section at a hearing within six months of their arrival at the institution.

(g) Early Termination from Supervision.

(1) A review of a YCA parolee's file will be conducted at the conclusion of each year of supervision (following receipt of the annual progress report -- Form F-3) and six months prior to the expiration of his sentence (after receipt of the final report).

(2) A YCA parolee shall not be continued on supervision beyond the time periods specified in the early termination guidelines (§2.43), unless case-specific factors indicate further supervision is warranted. The guidelines at §2.43 shall not be routinely used to deny early discharge to a YCA parolee who has yet to complete two (or three) years of clean supervision.

(3) The Commission shall consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record shall be taken into account only to evaluate the risk that the parolee may still pose to the public.

(4) In denying early discharge, the Commission shall inform the probation office by letter (with a copy to the YCA parolee) of the reasons for continued supervision. The reasons should pertain, whenever possible, to the facts and circumstances of the YCA parolee's case. If there are no case-specific factors which indicate that discharge should be either granted or denied and further supervision appears warranted, the Commission may inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

M-01 *Aggregated/Non-Aggregated Sentences.*

(a) *Aggregation of sentences.* Under federal law, adult sentences will be aggregated (combined to form a single term) for purposes of determining good time release and parole eligibility dates.

(b) *Aggregation for parole.* Under Title 18 U.S.C. §4205(a), a prisoner may be released after serving one-third of the term or terms of confinement.

1. For sentences under §4205(a), eligibility for parole consideration will be calculated at one-third of the term or terms of confinement; except for any term or terms totaling more than 30 years, parole eligibility is after ten years of such term or terms.

2. For sentences under 18 U.S.C. §4205(b)(2), eligibility for parole is at the Commission's discretion.

3. For combined sentences (18 U.S.C. §4205(b)(2) and §4205(a)), parole eligibility will be considered for hearing purposes to be at the one-third point of the 4205(a) sentence, calculated from the beginning date of the aggregated sentences (and adjusted for jail time credit).

(c) *Sentences that are not aggregated for parole eligibility purposes.*

1. FJDA sentences. Federal Juvenile Delinquency Act (FJDA) sentences can only be aggregated with other FJDA sentences.

2. YCA sentences. Youth Correction Act (YCA) sentences are not aggregated with other sentences or with each other.

3. NARA sentences. NARA sentences are not aggregated with other sentences.

4. Split sentences. "Split sentences" (confinement and probation imposed on a single count) are not aggregated with other sentences.

(d) *Multiple count terms.* The court may impose a term of confinement on one count and impose probation on another count, and specify the probation to be consecutive to the term of confinement. While the general structure is similar to a true "split sentence," it varies in that two or more counts are involved and the Commission will have parole jurisdiction over the period of confinement, provided all other parole criteria are met.

(e) *Parole Consideration of Non-Aggregable Consecutive Sentences.* Whenever a non-aggregable consecutive sentence is added to sentences being served, the prisoner may apply for parole on both sentences (if no initial hearing on the first sentence has been held). If he has already had an initial hearing on the first sentence, he receives an initial hearing on the next docket, even though the consecutive term has not yet commenced to run. At the initial hearing, all factors will be considered, and a new presumptive release date or continuance shall be ordered. (Subsequent hearings will be at the appropriate interval after the date of the most recent initial hearing.)

If the consecutive sentence carries no minimum term of imprisonment, a single presumptive release date may be set for both sentences as if they were aggregable. The order is to be in two parts: (1) ordering parole from the first to the second sentence; and (2) ordering parole from the consecutive sentence. Both parts of the parole order should be for the same presumptive release date. The parole certificate would indicate that the prisoner was paroled from the consecutive sentence.

If the consecutive sentence carries a minimum term, the Commission will set two presumptive release dates: The first date will effect the release of the prisoner to the consecutive sentence only. The second date will effect actual release to the community. In such case, the first date will have to be set to permit completion of the minimum term prior to the second (actual) presumptive parole date. For example, assume an initial hearing in the case of a prisoner with a six year Y.C.A. term followed by a six year (non-aggregable) regular adult sentence. If parole release is desired for 36 months, the first date will be for one year in custody, to permit completion of the 24 month minimum term on the consecutive sentence, prior to release. The second date would be for the 36th month of total confinement (the date the prisoner completes his minimum term). During service of the two-year minimum term, no interim review hearing will be held. Only the pre-release record review shall be conducted.

M-02 *Dockets Maintained.*

(a) *Regional Dockets.* The following dockets are maintained: (1) Regular Docket [Approved recommendation of the hearing examiner panel or recommendation modified by Regional Commissioner (C.F.R. §2.24(b))]; (2) Warrant Docket [Issuance and withdrawal of warrants]; (3) Special Dockets [(a) Referrals to NAB (initiated by Regional Commissioner) (C.F.R. §2.24(a)); (b) Original jurisdiction referrals (C.F.R. §2.17)]; and (4) Termination of Jurisdiction Docket.

(b) *National Appeals Board Docket.* The National Appeals Board will maintain one docket. It will include: (1) Regular Appeals (inmate initiated) (C.F.R. S§.26); (2) Original Jurisdiction Decisions (C.F.R. §2.17); (3) Regional Commissioner Referrals (C.F.R. §2.24); (4) Original Jurisdiction Appeals (C.F.R. §2.27); and (5) Special Orders.

M-03 *FOIA Procedures (Commission Orders and Notice of Action).*

(a) Each region will monthly mail to the Central Office (Attn: Attorney Management Analyst) the FOIA copy of each Notice of Action and, if applicable, attached salient factor score. Each region will also separately mail to the Central Office copies of all Commission Orders signed by the Regional Commissioner in appeal and reopen cases and the accompanying FOIA copies of the Notice of Action.

(b) The Attorney Management Analyst shall maintain indexed binders for each region, by month, containing this information with prisoner identifying information deleted. The Attorney Management Analyst shall also maintain copies of all Commission Orders and Notices of Action of the National Commissioners and National Appeals Board.

M-04 *Courtesy Hearings.* When resources permit, the Commission, upon the request of a state parole board, will endeavor to provide a hearing for a state prisoner when such prisoner is confined in a federal institution outside the requesting state and such institution is located at a substantial distance from the requesting state. The requesting state will be asked to provide specific instructions for the conduct of the hearing, as to any criteria to be considered, and as to whether a specific recommendation is desired.

■ M-05 *Disqualifications of Commission Personnel.* A hearing examiner or Commissioner shall disqualify himself when it reasonably appears that he may have a conflict of interest or that his participation in the hearing might place the Commission in an adverse situation. The disqualification should be recorded on tape and made a part of the hearing, followed by a memorandum to the file.

■ M-06 *Standards for Prisoner Interviews.*

The processing of a parole case requires the exchange of substantial amounts of information between the parties involved. Interviews must be scheduled promptly and be conducted in circumstances that are conducive to the achievement of their purpose. It is the responsibility of the custodian of those defendants who have not been released from custody to provide adequate facilities and the timely presence of prisoners for interview.

Some of the physical conditions essential to a successful interview are:

1. A quiet, private room free of distractions (if glass is necessary for observation, interviewee should be able to face away from glass).
2. Walls should be adequate to provide a sound barrier.
3. Atmosphere should be pleasant, relaxing, unthreatening, uncluttered and conducive to communication.
4. Freedom from telephone calls or other interrupting intrusions.

Some conditions deleterious to the purpose of the interview and unfair to the parties involved are:

1. Questions or statements can be overheard by others.
2. Poor acoustics or bad lighting.
3. Distractions caused by other voices, movements or noises in the area.
4. Uncomfortable furniture.
5. Interviews through or behind bars.
6. Unnecessary physical restraints.
7. Scheduling of interview causes prisoner to miss a meal, medical or other basic needs.

■ M-07 *Designation of Personnel Other Than Hearing Examiners to Conduct A Hearing.*

(a) *Assignment of Commission Staff.* A case analyst may conduct any hearing as assigned by the Regional Commissioner. Any other Commission staff may conduct hearings upon designation and assignment by the Chairman. Case-by-case designation is not required.

(b) *Local Revocation/Dispositional Revocation/Five Year Termination Hearings.* Where appropriate, the Regional Commissioner may designate an official (e.g., a federal probation officer or state parole board member) other than an institutional official as a hearing examiner to conduct such hearing. A Commission order providing for such designation will be entered in the case file. The recommendation of such official shall be treated as a hearing examiner recommendation for purposes of any hearing panel quorum requirement [NOTE: if the designated official does not sign a Commission order, the Regional Office can complete the Commission order by printing his name and cross-referencing the recommendation in the summary submitted by the designated official].

(c) *Any Other Hearing.* Where appropriate, the Chairman may designate an official (e.g., a federal probation officer or state parole board member) other than an institutional official to participate on a hearing panel for any type of hearing.

The recommendation of such official(s) shall be treated as a hearing examiner recommendation for purposes of any panel quorum requirement. Designation under this section will normally be by teletype with a copy to the prisoner's case file. [NOTE: this section contemplates the designated official joining a Parole Commission hearing examiner in conducting a hearing. Only in an extreme emergency will two non-Commission personnel be used to constitute a hearing panel.]

■ M-08 *Court Modification of Sentences.* When a motion for a modification of sentence (Rule 35) is filed within 120 days from the date of sentencing, the court may act upon such motion within 'a reasonable time'. Cases in which a modification appears not in conformance with this rule should be brought to the attention of the General Counsel of the Commission.

■ M-09 *Carrying of Firearms.* It is the policy of the United States Parole Commission that U.S. Probation Officers should not carry firearms in the performance of their duties for the Commission. As an exception to this policy, firearms may be carried, in the performance of Parole Commission duties, when approved by the Chief Judge and the Chief Probation Officer to the limited extent, and under the same terms and conditions, as authorized by the Judicial Conference of the United States in its policy statement on firearms dated March 1975.

■ M-10 *Petition for Reduction of Minimum Term for D.C. Code Violators.*

(a) The Parole Commission is authorized by the D.C. Code at §24-209 to exercise the "same power and authority" over District of Columbia prisoners incarcerated in Federal institutions as the D.C. Board has over prisoners in D.C. institutions. Therefore, in addition to making parole release decisions for these District of Columbia prisoners, the U.S. Parole Commission may petition the sentencing court for reduction of a minimum sentence under the criteria used by the D.C. Board under D.C. Code §24-201(c). These criteria are essentially the same as Federal parole release criteria at 18 U.S.C. §4206.

(b) *D.C. Code Violators With Minimum Terms of Less Than Ten Years.*

(1) If an order has been entered to grant presumptive parole at the completion of a D.C. prisoner's minimum term, and it appears that the Commission would have granted an earlier parole date were it not for the minimum term, then the Regional Commissioner may refer the case under §2.24(a) with his vote to petition the sentencing court for an appropriate reduction of the minimum term. If sufficient votes of approval for such action are obtained under §2.24(a), then the Legal Office will take the necessary steps to petition the sentencing court.

(2) In accordance with the above, a hearing panel at an initial hearing may, where appropriate, recommend to the Regional Commissioner that an application for reduction of the minimum term be made to the sentencing court. This shall be in addition to their recommended parole decision. Unless and until the minimum term is reduced by order of the sentencing court, such cases will be handled under normal procedures.

(c) *D.C. Code Violators With Minimum Terms of Ten Years or More.*

(1) The Bureau of Prisons has been requested to notify the Commission of all D.C. Code violators with minimum terms of ten years or more and to prepare parole files for such prisoners. Such cases will then be reviewed by a case analyst upon receipt of the file. If such prisoner appears to be suitable for a parole date before completion of his minimum sentence, the Regional Commissioner shall order the holding of a special hearing. This is not an initial parole hearing, but a

hearing solely to consider the appropriateness of an application to the sentencing court for reduction of minimum. If after this hearing it appears that a parole date below the minimum would be appropriate, the Regional Commissioner may refer the matter under §2.24(a) as outlined above. If sufficient votes of approval are obtained, the Legal Office will take the necessary steps to petition the sentencing court.

(2) Unless and until the minimum term is reduced by order of the sentencing court, the initial hearing will be scheduled under normal procedures.

Note: For D.C. Code violators, the Bureau of Prisons does not have authority to approach the sentencing court for a reduction of the minimum sentence as it does for U.S. Code violators. Thus, whenever the Bureau of Prisons wishes to recommend reduction of a minimum term, the Bureau of Prisons will notify the Regional Commissioner of that case and the reasons for the recommendation. The Regional Commissioner may then proceed as appropriate under the above procedures.

(d) *Time of Filing Recommendations.* Since the D.C. Code provides that the Commission must find the prisoner eligible for immediate release, decisions to file a motion under this section may tentatively be made following initial hearing but the actual motion should not be filed until approximately eight months prior to the date recommended [the institution should be notified to provide a special progress report for this consideration nine months prior to the date tentatively selected].

(e) *Preparation of a Motion for Reduction of Sentence.* After decision by the Commission, the case file is to be forwarded to the legal section with a memorandum requesting preparation of the motion for reduction of sentence. The memorandum should set forth the recommendation and reasons therefor. After preparation of the motion by the legal section, the motion will be transmitted to the court under signature of either the Regional Commissioner (or the Chairman or Vice Chairman, if more expeditious).

■ M-11 *Translations.* If a translation is needed of a document, such requests should be sent to the State Department on Form DS-434 (GPO Form) at the following address: Department of State Translation Department, 2201 C Street, N.W., Room 2214A, Washington, D.C. 20520; telephone (202) 647-2201.

APPENDIX 1-A - PRE-HEARING ASSESSMENT FORMAT

	INSTITUTION:________________
NAME:______________________________	REG. NO.:________________________
DATE OF BIRTH:____________________	MONTHS IN CUSTODY: ____ AS OF ____________
SENTENCES (LENGTH/TYPE): _________	PAROLE ELIGIBILITY DATE: ______________
FINES:$_______ [ ]COMM [ ]NON-COMM	[__TWO-THIRDS] [__STAT. MR] DATE:__________
RESTITUTION: $____________________	(WHICHEVER DATE COMES FIRST)
SPECIAL ASSESSMENT: $_____________	REVIEWER:_______________ DATE:__________

I. PRESENT OFFENSE:

(a) The prisoner was convicted by [__plea] [__trial] of:

(b) (***Describe offense behavior giving dates offense commenced/ended; note if information comes from other than PSI).

(c) The offense behavior is rated as Category ________ severity because:

II. SALIENT FACTOR SCORE: (***List mo.-yr./offense/dispo. of 5 most significant convictions/commitments).

A=[ ] Subject has [__0; __1; __2; __ 3; or __4] [__5 or more] prior convictions.

B=[ ] Subject has _____ prior commitments of more than 30 days that were imposed prior to the last overt act of the current offense - see dispositions listed above.

C=[ ] Subject was ______ years old at the commencement of the [__current offense] [__probation violation behavior]. Subject [__does not have] [__has] five or more prior commitments.

D=[ ] Subject [__has no prior commitments] [__was last released from a countable commitment] [__less than three years prior to the current offense] [__three or more years prior to the current offense]. Date of last release:________________.

E=[ ] Subject [__is not] [__is] a Probation/Parole/Confinement/Escape Status violator. (***Take this point if on any such status at any time during the current offense or if committed as a probation violator this time; and give specifics.)

F=[ ] Subject [__does not have] [__has] a history of Opiate Dependence: (***If point is taken, give specifics.) ______________________________.

[ ] = Total Score

III. The guideline range is ___________ months. [__Also, subject [__failed to appear] [__escaped] [__attempted to escape] [__from] [__secure] [__non-secure] [__custody] [__with voluntary return in 6 days or less] which requires [0-6] [6-12] [8-16] months to be added to the original guideline range. In addition, subject committed rescission behavior classified as administrative. Guidelines established by the Commission indicate a range of [up to 8 months per drug-related infraction] [and] [up to 2 months for non-drug related infractions]. Subject has committed [____________ drug-related infraction(s)] [and] [____________ non-drug related infraction(s)]. Aggregate guideline range is ______ months.]

IV. OTHER SIGNIFICANT PRIOR RECORD/STABILITY FACTORS: (***Include psychological/ psychiatric problems and any pending charges or known detainers, if applicable; drug abuse other than mentioned above; or other significant positive/negative stability factors as relevant; also include any particularly aggravating or mitigating factors concerning prior record.)

V. CODEFENDANTS: [__None] (***If yes, give name, register number, sentence, institution, guideline data, months to be served before release, where known.)

VI. FORM USA-792, AO-235, AC-337: [__None] (***If present; note comments.)

VII. PAROLE ON THE RECORD: [__Yes] [__No]. (***If yes, complete VIII, IX & X.)

VIII. EVALUATION: The applicable guideline range is _____ months. (***Explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines; and add other comments if applicable.)

IX. PANEL RECOMMENDATION: [__Parole Effective] [__Continue to a Presumptive Parole] after service of _____ months, [______________]. ________________
____

*(***PRE-REVIEWER INSTRUCTIONS: Complete Form H-39 and refer file to AHE and/or Case Analyst if Form USA-792, AO-235 or other correspondence requests notification in advance to attend hearing and/or be notified of parole decision. If the PSI is not absolutely clear on any offense behavior or salient factor score item, call or write the Probation Officer and/or U.S. Attorney (requesting Form USA-792) to clarify before completing this Assessment.)*

*(***NOTE TO TYPIST: Do not type the instructions in (***) or [__] unless checked or marked.)*

APPENDIX 1-B - INITIAL HEARING SUMMARY FORMAT

CASSETTE NO.______________
NAME:______________________________ SEVERITY CATEGORY: __________ SFS:_____
REG. NO.:__________________________ GUIDELINE RANGE:________________________
INSTITUTION:_______________________ RECOMMENDED RELEASE:____________________
HEARING DATE:______________________ AFTER SERVICE OF __________ MONTHS.
HEARING PANEL:______________________

I. The panel has discussed the prisoner's severity rating, salient factor score, and guidelines with the prisoner. The prisoner [__admits] [__contests] the description of the offense behavior, salient factor score items, and/or guideline range. (***Summarize prisoner's statement; if prisoner contests any of the above information, indicate the panel's finding (e.g., the panel, after review of the record and the prisoner's explanation, finds the (SFS) to be (7).))

II. MODIFICATIONS/ADDITIONS/CORRECTIONS FROM PREHEARING ASSESSMENT: [__None] (***If any changes, explain reasons for changes (e.g., new information, correction or error). Note relevant information received since pre-hearing assessment.)

III. INSTITUTIONAL FACTORS:
(a) Discipline
(b) Program Achievement

IV. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

V. RELEASE PLANS: (***Resources available; recommendation for CTC placement and/or special conditions of parole; status of detainers).

VI. REPRESENTATIVE: [__None]
(a) Name; (b) Relationship; (c) Address [city/state]; (d) Comments.

VII. EVALUATION: The applicable guideline range is ______ months. (***Explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines; and add other comments if applicable.)

VIII. PANEL RECOMMENDATION: [__Continue to] [__Expiration] [__a Presumptive Parole] [__Parole effective] [__after the service of ______ months,] [__Continue for a Fifteen-Year Reconsideration Hearing in ____________]
month/year

*(***NOTE TO TYPIST: Do not type the instructions in (***) or [__] unless checked or marked.)*

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APPENDIX 1-C - PRE-REVIEW SIH/RESCISSION HEARING

(Special Reconsideration, Reopen, Appeal, Review, Mandatory Parole, Etc.)

NAME:______________________________ REG. NO:______________________
HEARING TYPE:_______________________ INSTITUTION:___________________
2/3 or STATUTORY MR DATE (whichever comes first):____________________
FINES/RESTITUTION/COURT ASSESSMENT: [__ NO] [__ YES]
PRE-REVIEW DATE:____________________ REVIEWER:______________________

I. PREVIOUS COMMISSION ACTION: Give date of last consideration and action taken. If this is a special request (reopen or appeal), summarize the reasons given for that action.

II. INSTITUTIONAL ADJUSTMENT AND RELEASE PLANS: Refer to latest progress report, but summarize in 1 or 2 sentences the overall institutional adjustment. Describe any record of misconduct or outstanding program achievement. Briefly describe plans for living in the community (release through CTC, to detainer, or aftercare).

III. MISCONDUCT DETAILS: (rescission consideration): Guidelines (when appropriate, worksheet): Official version: the misconduct as stated by the official records. If the disciplinary committee has not concluded its proceedings at the time of the scheduled hearing, the case should be continued to the next docket.

Severity Category:

Salient Factor Score:

A =
B =
C =
D =
E =
F =

Total

IV. CODEFENDANTS: List names and parole status, if known. If there are no codefendants, this paragraph need not be used.

V. EVALUATION: Refer to the guidelines computed at the previous hearing(s), and any reasons given suggesting a decision either above or below these guidelines. Describe reasons for any changes made in the guidelines data.

APPENDIX 1-D - REVIEW SUMMARY

(If Statutory Interim Hearing becomes Rescission Hearing, use the Rescission Hearing format but label the hearing as a Statutory Interim Hearing)

NAME:____________________ HEARING TYPE*:______________
REG. NO.:____________________ TWO-THIRDS OR STATUTORY MR DATE:______
INSTITUTION:____________________ (WHICHEVER COMES FIRST)
DATE:____________________ FULL TERM DATE:______________
PANEL:____________________

I. PREVIOUS COMMISSION ACTION: Give date of last consideration and action taken. If this is a special review (reopen or appeal), summarize the reasons given for that action.

II. CODEFENDANTS: List names and parole status, if known. If there are no codefendants, this paragraph need not be used.

III. INSTITUTIONAL ADJUSTMENT AND RELEASE PLANS: Refer to latest progress report but summarize in a sentence or two the overall institutional adjustment. If there is any record of either misconduct or outstanding program achievement, describe. Briefly, describe the plans for living in the community (including any plan for release through a CTC, release to a detainer, or for aftercare services).

IV. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

V. REPRESENTATIVE: Identify and summarize statements made by a representative. If there is none, use this paragraph, but state "None".

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*Hearing types may include Statutory Interim Hearings, Special Review Hearings (by reopening or appeal), and Mandatory Parole Hearings (at two-thirds of the sentence).

best copy available

VI. EVALUATION: Refer to the guidelines computed at the initial hearing and any reasons given suggesting a decision either above or below these guidelines. Describe reasons for any changes made in the guidelines data.

In statutory interim hearings, this section should deal only with reasons why the previously established decision should or should not be changed. In mandatory parole hearings (two-thirds of term), this section should deal only with the question of whether the inmate has seriously or frequently violated institutional rules and regulations or there is a likelihood that he will again violate the law.

VII. RECOMMENDATION: Use standard wording insofar as possible.

VIII. REASONS: If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Reasons need not be typed on summary.)

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APPENDIX 1-E - PRE-REVIEW REVOCATION HEARING

NAME:________________________________ REG. NO:______________ DOB:_______
HEARING TYPE:________________________ INSTITUTION:______________________
PROJECTED MR DATE (if an estimate is practical):__________________________
FINES/RESTITUTION/COURT ASSESSMENT: [__ NO] [__ YES]
PRE-REVIEW DATE:_____________________ REVIEWER:_________________________

I. PREVIOUS COMMISSION ACTION: State in narrative form the events which have occurred during subject's term. State the original offense and sentence, date of parole (or mandatory release or Special Parole Term) and district to which released. If released to a detainer so specify and state when subject actually began active supervision in the community.

State date Warrant was issued and place and date Warrant was executed. State date and place preliminary interview was held and describe the entries made on Forms CJA-22 and F-2 or I-16, especially whether subject admitted or denied the charges, and whether he requested a court-appointed attorney.

II. REVIEW OF CHARGES: Each charge in the Warrant Application should be described and summarized separately on the basis of the documents in the file.

III. COMMUNITY RESOURCES AND PAROLE RISK: State briefly the plan proposed when last released and to what extent it was carried out. Summarize briefly adjustment under supervision. Describe present plan for community living if parole (or mandatory release) is not revoked. Describe any period of custody facing subject when released from the Federal term.

IV. SALIENT FACTOR SCORE: (*List month/year/offense/disposition of 5 most significant convictions/ commitments).

A = [ ] Subject has [ ] 0; [ ] 1; [ ] 2; [ ] 3; [ ] 4; [ ] 5 or more prior conviction(s)

1.
2.
3.
4.
5.

B = [ ] Subject has ( ) prior commitments of more than 30 days that were imposed prior to the last overt act of the current offense (see dispositions listed above).

C = [ ] Subject was ( ) years old at the commencement of the [current offense] [probation violation behavior]. Subject [does not have] [has] five or more prior commitments.

D = [ ] Subject [has no prior commitments] [was last released from a countable commitment] [less than three years prior to the current offense] [three or more years prior to the current offense]. Date of last release: ( ).

E = [ ] Subject [is not] [is] a Probation/Parole/Confinement/Escape Status Violator. (*Take this point if on any such status at any time during the current offense or if committed as a probation violator is time; and give specifics.)

F = [ ] Subject [does not have] [has] a history of Opiate Dependence: (*If point is taken, give specifics.)

[ ] Total Score

V. EVALUATION: The Parole Violation behavior is rated as Category ( ) severity because ^ . The reparole guideline range is ^ months.

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APPENDIX 1-F REVOCATION SUMMARY

NAME:____________________	HEARING TYPE*:________________
REGISTER NO.:________________	PROJECTED M.R. DATE:____________
INSTITUTION:_________________	(IF AN ESTIMATE IS PRACTICAL)
DATE:____________________	FULL TERM DATE:______________
	PANEL:____________________

I. COUNSEL AND WITNESSES:
If there was no attorney or witnesses, state "None".

List name, address, and phone number of attorney. List names, addresses and relationship of witnesses. Specify which were "voluntary" witnesses for subject and which were "adverse" witnesses.

Remarks by attorney or witnesses should be included elsewhere in the summary - not in this section.

II. PREVIOUS COMMISSION ACTION: State in narrative form the events which have occurred during subject's term. State the original offense and sentence, date of parole (or mandatory release or Special Parole Term) and district to which released. If released to a detainer so specify and state when subject actually began active supervision in the community.

State date Warrant was issued and place and date Warrant was executed. State date and place preliminary interview was held and describe the entries made on Forms CJA-22 and F-2, (or I-16) especially whether subject admitted or denied the charges, and whether he requested a court-appointed attorney.

**Institution Revocation, Local Revocation, Dispositional Revocation*

III. REVIEW OF CHARGES: Each charge in the Warrant Application should be described and summarized separately on the basis of the documents in the file and the prisoner's statements. Although it is not necessary to repeat verbatim the details of the charges as listed on the Warrant Application, include in the summary the details of the behavior which led to each charge. Be sure to state whether subject admits or denies each charge and summarize his explanation or statement of extenuating circumstances in each instance.

Include the facts of any additional violations which may have come to light during the course of the hearing. A separate section need not be used for this purpose; merely include these along with the charges as placed on the Warrant Application, but tell how they came to light at the time of the hearing.

IV. FINDINGS OF FACT: The following format (as an example) should be used for this section:

The panel finds as a fact that subject violated (parole) (Special Parole Term) (mandatory release) as charged as indicated below:

Charge #1 - Use of Dangerous Drugs
Basis: Your admission to the examiner panel.

Charge #2 - Failure to Submit Monthly Supervision Reports
Basis: Report from USPO Connery dated June 10, 1976.

Charge #4 - Possession of Narcotic Paraphernalia
Basis: Conviction in U.S. Court, Philadelphia, on July 1, 1976.

The panel makes no finding relative to the following charges:

Charge #3 - Failure to report arrest

Charge #5 - Shoplifting

V. COMMUNITY RESOURCES AND PAROLE RISK: State briefly the plan proposed when last released and to what extent it was carried out. Summarize briefly adjustment under supervision. Describe present plan for community living if parole (or mandatory release) is not revoked. Describe any period of custody facing subject when released from the Federal term.

VI. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

VII. EVALUATION: Describe the subject in terms of assets, problems, maturity, and likelihood of successful community adjustments. Evaluate subject's adjustments while under supervision including time elapsed before violations occurred, and describe his cooperation with his probation officer or aftercare staff, if any. Cite reparole guidelines information.

VIII. RECOMMENDATION: Use standardized wording insofar as possible. Three recommendations must be made: (a) relative to revocation; (b) relative to parole credit computation (see note below); and, (c) relative to continuance.

IX. REASONS FOR CONTINUANCE (if any): If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Typist need not copy reasons on summary.)

NOTE: PAROLE CREDIT COMPUTATION (if parole is revoked): State as part of the recommendation that subject will receive credit for (one of the following):

(a) all of the time spent on parole; or,
(b) none of the time spent on parole; or,
(c) time spent on parole from date of release to (date) at which time he failed to report as required.

NOTE: Typist will include on the NOTICE OF ACTION the findings of fact, the basis for each finding, reasons for continuance and information relative to credit for "street time".

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APPENDIX 1-G - RESCISSION SUMMARY

NAME:________________________________
REGISTER NO.:__________________________
INSTITUTION:___________________________
DATE:________________________________

HEARING TYPE: RESCISSION____________
TWO-THIRDS OR STATUTORY MR DATE:_____
(WHICHEVER COMES FIRST)
FULL TERM DATE:____________________
PANEL:___________________________

I. PREVIOUS COMMISSION ACTION: Give brief details and date of Commission action to retard the parole date.

II. MISCONDUCT DETAILS:

A. Official version: Describe the misconduct as stated by the official records. If the disciplinary committee has not concluded its proceedings at the time of the scheduled hearing the case should be continued to the next docket.

B. Inmate's comment: Summarize the inmate's explanation, if any, of his misconduct, and his view of its seriousness.

III. REPRESENTATIVE: Identify representative and summarize his statements. If there was no representative, state "None".

IV. FINDINGS OF FACT: The following format (as an example) should be used for this section:

The panel finds that you have committed the following violations:

(1.) You were found in possession of marijuana on 8/8/80
Basis: IDC findings dated 8/12/80.

(2.) You escaped from the Denver CTC on 6/20/80

Basis: Incident report dated 6/21/80
Your admission to the Examiner Panel

(3.) You were in possession of a stolen vehicle while on pass from Denver CTC on 9/9/80

Basis: Arrest Report dated 9/9/80
CPO report dated 9/10/80

V. EVALUATION: Evaluate the inmate's explanation of the violations. Evaluate whether parole should be rescinded. Refer to rescission guidelines. Note aggravating and mitigating circumstances.

VI. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

VII. RECOMMENDATION:
1. relative to rescission, and
2. relative to continuance, if any.

VIII. REASONS FOR CONTINUANCE: (if any): If reasons are clearly stated on the Notice of Action Worksheet, state: See Notice of Action Worksheet. (Typists need not copy reasons on summary).

NOTE: Typists will include on the Notice of Action the findings of fact, the basis for each finding and the reasons for continuance.

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APPENDIX 1-H - PAROLE TERMINATION HEARING

NAME:____________________ HEARING TYPE:____________________
REGISTER NO.:____________________ FULL TERM DATE:____________________
DATE:____________________ EXAMINER:____________________

I. COUNSEL OR WITNESSES: List name and address only - Describe their comments below (Note whether attorney is court-appointed). If none present, state "None".

II. SENTENCE DATA: Cite original offense, date of commitment, and date and type of release to supervision. Describe any time spent in confinement since release on the federal sentence and give total number of months under supervision in the community. In a sentence or two, highlight prior criminal record.

III. COMMUNITY ADJUSTMENT: Cite district of supervision and any major changes in residence. In narrative style, describe employment history, family or marital status, including any major changes. Describe any arrests, convictions or parole violations during supervision period. If there have been no arrests or parole violations, state that fact. If there were aftercare services provided, describe participation and present status. (If there were no such services, no references to this fact need be made).

IV. STATEMENTS OF COUNSEL/WITNESSES: Summarize statements made by attorneys or witnesses (if any) relative to subject's community adjustment.

V. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

VI. EVALUATION: Summarize statements made in other sections, describe releasee as a person and give basis and justification for the decision.

VII. RECOMMENDATION: Standard wording insofar as possible.

VIII. REASONS FOR CONTINUED SUPERVISION: Give specific language to be placed on a Notice of Action.

The following are examples only:

There is a likelihood of conduct which would violate the law because:
(a) "You have had a record of criminal conduct during your supervision period."

(b) "You have seriously violated conditions of your release."

(c) "You are subject to personal pressures of (specify) which may lead to criminal conduct."

(d) "Your association with persons involved in criminal behavior and which may lead to criminal conduct."

- -

APPENDIX 1-I - PRE-REVIEW COMBINED DISPOSITIONAL/INITIAL HEARING

NAME:______________________________ INSTITUTION:____________________
DATE OF BIRTH:_______________________ REG. NO.______________________
NEW SENTENCE (LENGTH/TYPE):____________ MONTHS IN CUSTODY:______________
PAROLE ELIGIBILITY:____________________ 2/3 [ ] STAT MR [ ] DATE:______
FINES/RESTITUTION/COURT ASSESSMENT: [__ NO] [__ YES]
DETAINER: [YES] [ ] [NO] [ ]
REVIEWER:___________________________ PRE-REVIEW DATE:________________

I. PREVIOUS COMMISSION ACTION: (original sentence)

A. Offense and Sentence Data: Describe offense behavior giving dates offense commenced/ended; note if information comes from other than (PSI).

B. Parole Data, Warrant Data, Violator Term Balance:

II. CURRENT VIOLATION:

A. Offense: The prisoner was convicted by (plea)(trial) of:

B. Sentence Data:

C. Review of Warrant Charges:

III. SALIENT FACTOR SCORE: (List month/year/offense/disposition of 5 most significant convictions/commitments.)

A = [ ] Subject has ( ) prior convictions.

1.
2.
3.
4.
5.

B = [ ] Subject has ( ) prior commitments of more than 30 days that were imposed prior to the last overt act of the current offense.

C = [ ] Subject was (   ) years old at the commencement of the [current offense] [probation violation behavior]. Subject [does not have] [has] five or more prior commitments.

D = [ ] Subject [has no prior commitments] [was last released from a countable commitment] [less than three years prior to the current offense] [three or more years prior to the current offense]. Date of release (   ).

E = [ ] Subject [is not] [is] a Probation/Parole/Confinement/Escape Status violator. (   )

F = [ ] Subject [does not have] [has] a history of Opiate Dependence. (   )

[ ] Total Score

IV. OTHER SIGNIFICANT PRIOR RECORD/STABILITY FACTOR: (**Include psychological/psychiatric problems, if applicable; drug abuse other than mentioned above; or other significant positive/negative stability factors as relevant; also include any particularly aggravating or mitigating factors concerning prior record).

V. CODEFENDANTS: [___None] (***If yes, give name, register number, sentence, institution, guideline date, months to be served before release, where known).

VI. FORM USA-792; AO-235; AO-337: [___None] (If present; note comments.)

VII. EVALUATION: The offense behavior is rated as Category (   ) severity because ^ . The guideline range is ^ . [Also, subject [failed to appear].[escaped] [attempted to escape] [from] [secure] [non-secure] [custody] [with voluntary return in 6 days or less] which requires [0-6] [6-12] [8-16] months to be added to the original guideline range. Aggregate guideline range is ^ months.]

- -

APPENDIX 1-J - COMBINED DISPOSITIONAL REVOCATION/INITIAL HEARING SUMMARY FORMAT

NAME:____________________ HEARING DATE:________________
REG. NO.:____________________ INSTITUTION:________________
DATE OF BIRTH:____________________ SEVERITY CATEGORY:________________
SFS:____________________ GUIDELINE RANGE:________________
DETAINER:____________________ IN CONTINUOUS CUSTODY:________________
RELEASE TO COMMUNITY RECOMMENDED AFTER SERVICE OF ______ MONTHS
PANEL:____________________

I. PREVIOUS COMMISSION ACTION (Original Sentence):

a. Offense and Sentence Data (length and type)

b. Parole Data (type of release/date of release/number of days remaining to be served/date warrant issued/date warrant executed - if executed)

II. CURRENT VIOLATION:

a. Offense (give offense of conviction and description of the offense behavior)

b. Sentence Data (length/type/parole eligibility date/MR date/FT date)

c. Review of Charges (see instructions in Appendix 1-F (Revocation Summary))

d. Other (e.g., codefendant information/Forms 792/235/337)

e. Prisoner Version and Comments

III. FINDINGS OF FACT:

a. Note findings and basis (see instructions in Appendix 1-C (Revocation Summary))

b. Rate the offense severity giving reasons for the rating.

IV. SALIENT FACTOR SCORE:

A = [ ] Prior Convictions/Commitments: Subject has ( ) prior convictions

B = [ ] resulting in ( ) prior commitments of more than 30 days. (list year/offense/disposition of 5 most significant convictions/commitments and summarize thereafter)

C = [ ] Subject was ( ) years old at time of current offense and (has) (does not have) five or more prior commitments: (describe as applicable)

D = [ ] Subject (has) (does not have) a recent commitment-free period of three years: (describe as applicable)

E = [ ] Subject (is) (is not) a Probation/Parole/Confinement/Escape Status Violator This Time: (describe as applicable)

F = [ ] Subject (has) (does not have) a history of Opiate Dependence: (if applicable describe)

Prisoner (admits) (contests) factual basis of the salient factor score items. (summarize prisoner's explanation):

V. OTHER SIGNIFICANT PRIOR RECORD/STABILITY FACTORS: (psychological/psychiatric problems; drug abuse other than noted above; or other positive/negative stability factors as relevant including any particularly aggravating or mitigating factors concerning prior record)

VI. INSTITUTIONAL FACTORS:

(a) Discipline

(b) Program Achievement

VII. RELEASE PLANS: (note what resources are likely to be available upon release, with consideration given to recommending CTC placement and/or adding special conditions of parole where advisable)

VIII. COUNSEL/WITNESSES/REPRESENTATIVE: (give name, relationship, address and comments of each)

IX. FINES/RESTITUTION/COURT ASSESSMENT: [__N/A] (***If yes, indicate amount ordered, type of fine - committed/non-committed; amount paid to date and report discussion of payment plan to satisfy order.)

X. EVALUATION: Note applicable guideline range and explain factors sufficient to warrant a decision above/below guidelines; or factors relative to placement at top/middle/bottom of guidelines. Note any comments/ recommendations.

XI. PANEL RECOMMENDATION: Regarding revocation; credit for street time; release on the new federal sentence; commencement of the unexpired portion of the original sentence; release on the unexpired portion of the original sentence.

XII. REASONS:

For Revocation: PLEASE COPY FROM FINDINGS OF FACT SECTION OF THE SUMMARY

For Continuance: PLEASE COPY FROM THE REPAROLE GUIDELINE WORKSHEET

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APPENDIX 1-K - PRE-HEARING REVIEW FOR TRANSFER TREATY CASES (SPECIAL TRANSFEREE FORM 2)

NAME:______________________________
REG. NO.:__________________________ CUSTODY:_________ MONTHS AS OF: _________
DATE OF BIRTH:_____________________ REVIEWER:_______________________________
SENTENCE LENGTH:___________________ DATE:___________________________________

I. INFORMATION USED IN THIS SUMMARY

A. Fully describe the documents used for this report. Generally such information will consist of a post sentence report, a request for correction of the postsentence report from the defense attorney, and the probation officer's response to the defense attorney's request.

II. SENTENCE INFORMATION

A. Describe conviction(s) with dates, jurisdiction, offenses, and sentence(s).

B. Describe circumstances of transfer. (NOTE: Determine if there are factors present suggesting that a release date should be set on the record, i.e. the Probation Officer's recommended guideline range has already been satisfied or is near satisfaction. If such factors are present and there are no other reasons to conduct a hearing, then a hearing waiver form (Special Transferee Form 3) should be forwarded to the transferee.)

C. Provide statement regarding time in custody.

III. OFFENSE INFORMATION

A. Describe behavior(s).

B. Tentative Offense Level Total Score.

C. Review the rational for Offense Level Total Score. Describe the material provided in the postsentence report starting with a statement explaining the similar offense behavior for U.S. Code behaviors and cite the applicable Sentencing Guidelines. Do this for each offense if there are multiple offenses or groups of offenses to be utilized in arriving at an offense level total score. For each grouping explain any adjustments effecting points. If multiple counts are involved provide a review of multiple count adjustments to create a combined adjusted offense level. Conclude with a statement regarding points for acceptance of responsibility.

D. If there are unresolved issues to be decided at the time of the hearing provide an explanation.

IV. CRIMINAL HISTORY

A. Review the information from the postsentence report that has resulted in a given Criminal History Category.

B. Tentative Criminal History Category.

C. If there are unresolved issues to be decided at the time of the hearing provide an explanation.

V. CAREER OFFENDER/CRIMINAL LIVELIHOOD

A. If adjustments are made in either the Offense Level Total Score or Criminal History Category as a result of Career Offender or Criminal Livelihood provisions as explained in the Sentencing Commission's guidelines at 4B1.1 and 4B1.3, provide an explanation and a statement of the impact such adjustments will cause with regard to either the Offense Level Total Score or the Criminal History Category.

B. If there are unresolved issues to be decided at the time of the hearing provide an explanation.

VI. TENTATIVE GUIDELINE RANGE FROM SENTENCING TABLE

State what the guideline range is from the sentencing table.

VII. SUPERVISED RELEASE

A. Review the material from the postsentence report regarding supervised release provisions for the offense behavior(s).

B. Based upon a review of the information in the postsentence report provide a short statement regarding needs or goals with regard to supervised release. Also, provide a statement regarding the conditions of supervision that would appear to be appropriate based upon the information at hand. Refer to the Standard Conditions of Supervision prepared by the Probation Division (attached) and/or special conditions of supervised release itemized in the sentencing guidelines manual (5B1.4(b)).

C. If there are unresolved issues to be decided at the time of the hearing provide an explanation.

VIII. DEPARTURE

A. Briefly summarize any information provided by either the probation officer or the prisoner (including the prisoner's attorney) that may be a basis for departure from the guidelines.

APPENDIX 1-L - SPECIAL TRANSFEREE HEARING SUMMARY (SPECIAL TRANSFEREE FORM 4)

NAME: ______________________________

REG. NO.: ______________________________ EXAMINERS: ______________________________

INSTITUTION: ______________________________ DATE: ______________________________

I. NAME AND ADDRESS OF CERTIFIED COURT REPORTER RECORDING THIS HEARING.

II. ATTORNEY OR REPRESENTATIVE
Provide full identification including address and telephone number(s).

III. DISCLOSURE

A. Provide a statement, including dates, verifying that subject and/or counsel have received a copy of the postsentence report.

B. Provide a statement, including dates, verifying that subject and/or counsel have received documentation prepared by the probation officer in response to a request for correction.

C. For any other documents considered, provide a statement identifying the documents, and verifying that said documents have been reviewed by subject and attorney.

IV. ARGUMENTS AND FINDINGS ON CONTESTED FACT(S)

A. If there are no unresolved objections to the factual statements contained in the postsentence report, provide the following statement:

> There being no unresolved objections to the factual statements contained in the post sentence report, the Commission adopts these statements as its findings as follows:
>
> Total Offense Level: ________________
> Criminal History Category: __________
> _________ to _________ months imprisonment
> _________ to _________ years supervised release

B. If there is a mixture of controverted and uncontroverted facts, use the following format for contested facts. Then use the above format to describe the guidelines and period of supervised release.

C. Describe the argument(s) of the prisoner and/or attorney for each controverted item. Then, in a separate paragraph for each item, make a formal finding. Finally, for each finding provide a brief rational.

1. Offense Level Total Score
2. Criminal History
3. Career Offender/Criminal Livelihood
4. Guideline Range
5. Supervised Release
6. Departure

V. RECOMMENDED ACTIONS

A. Provide a statement recommending how much time should be served prior to release (including the recommended release date) and how much supervised release should follow (including the end of supervision date). (Note: The combined time to be served and time on supervised release cannot exceed the length of the foreign sentence.) Explain the recommendation in terms of guideline parameters. If there is a departure, provide an explanation.

B. Provide a statement that the reason(s) for the recommended action(s) were explained to subject, and others in attendance at the hearing in his behalf. NOTE: In some cases, a departure above the sentencing guidelines will be necessary because the transferee has already served the guidelines while in foreign custody or during the preparation of the postsentence report. In those cases where there are no other aggravating factors, a departure from the guidelines can be explained as follows: "You have recently been transferred to the United States and additional time was needed to process your case."

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APPENDIX 1-M - NOTICE OF ACTION WORKSHEET (SPECIAL TRANFEREE FORM 6) TRANSFER TREATY DETERMINATION PURSUANT TO 18 U.S.C. 4106A

NAME:____

REG. NO._____________________________________ INSTITUTION:________________________________

____

The transferee was convicted of ____
____
in ________________________________ and sentenced to serve ____________________.

The Commission has made a finding that the foreign conviction is most similar to ____
____

The Commission finds that the Total Offense Level is ____________________, that the Criminal History Category is ____________________, that Career Offender and/or Criminal Livelihood provisions (apply/do not apply) and that the guideline range is ____________________. It is further found that a period of supervised release of ________________ to ________________ years is applicable.

Pursuant to 18 U.S.C. 4106A it is ordered that the transferee be released on ________________________________ after service of ____________________ months.

Use the following if the guideline range exceeds 24 months:
The guideline range exceeds 24 months. The reason(s) for the above action is/are as follows: ____
____.

Use the following for departures from the guidelines:
The above action is a departure from the guideline because ______________________
____
____
____
____
____.

It is further ordered that the transferee, immediately upon discharge from the period of incarceration, serve a ________ month term of supervised release until ________________ under the following conditions:

________ Standard conditions of supervised release (see attached)

________ Special conditions of supervised release (see attached)

1.

2.

The special condition(s) of supervised release has/have been imposed because
____
____
____
____.

SIGNATURES OF PAROLE EXAMINERS/COMMISSIONER *

______________________	______________________
______________________ (PRINTED NAME)	______________________ (PRINTED NAME)
______________________ (DATE)	______________________ (DATE)

*NOTE: The examiners will sign the handwritten worksheet after the hearing. This same format in typed form will be used for the official order of the Commissioner, absent any extraneous language. The finished document will be titled: TRANSFER TREATY DETERMINATION PURSUANT TO 18 U.S.C. 4106A. The following statement will be placed of the bottom of the order. NOTE: This action may be appealed to the United States Court of Appeals for the circuit in which the offender is imprisoned within 45 days after receipt. The notice of appeal must be filed in accordance with Title IV of the Federal Rule of Appellate Procedure (Rule 15(a) et seq.). A notice of appeal must also be filed with the Attorney General, Criminal Division, Attention: General Litigation.

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APPENDIX 1-N - U.S. PROBATION OFFICERS'S PROCEDURAL CHECKLIST FOR PRISONERS TRANSFERRED PURSUANT TO TREATY (SPECIAL TRANSFEREE FORM 1)

The following checklist is intended to insure that a special transferee has received notification of his/her rights under the statute and regulations providing for special transferee hearings as required by 28 C.F.R. §2.62(b).

( ) Transferee advised of right to counsel (retained or court-appointed pursuant to 18 U.S.C. §3006(A)).

( ) Transferee advised of right to review the non-confidential portions of the Postsentence Investigation Report to be prepared following his entry into the United States.

( ) Transferee advised that he/she will have thirty days after the disclosure of the Postsentence Report to transmit any written objections to the probation officer.

( ) Transferee advised that a special transferee hearing will be conducted within 60 days from his/her entry into the United States, or as soon as practical following completion of the Postsentence Investigation Report and appointment of counsel.

( ) Transferee advised of right to present documentary evidence and to testify on his/her own behalf at a special transferee hearing.

( ) Transferee advised that the transferee and his counsel will be afforded an opportunity to comment upon the sentencing guideline estimate contained in the Postsentence Investigation Report at the special transferee hearing and to present arguments and information relating to the Commission's sentencing guideline determination.

( ) Transferee advised of right to appeal the decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined. See Title IV, Rules of Appellate Procedure.

________________ ________________________

Date United States Probation Officer

I have read, or have had read to me, the above notification of my rights with regard to a special transferee hearing.

________________ ________________________

Date Transferee

- -

APPENDIX 1-O - SPECIAL TRANSFEREE HEARING CHECKLIST (SPECIAL TRANSFEREE FORM 5)

TRANSFEREE:______________________ REGISTER NO.:______________________

( ) The transferee was advised of his/her right to counsel (retained or court-appointed).

( ) The transferee and his/her counsel had an opportunity to read and discuss the Postsentence Investigation Report and are prepared to go forward with the hearing.

( ) The transferee was given an opportunity to present documentary evidence and to testify on his/her own behalf.

( ) The transferee and his/her counsel were afforded an opportunity to comment upon the sentencing guideline estimate contained in the Postsentence Investigation Report.

( ) The transferee was notified of the panel's recommended findings of fact and recommended sentencing determination at the conclusion of the hearing.

( ) The transferee was advised of his/her right to appeal the ultimate decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined. The notice of appeal must be filed in accordance with Title IV of the Federal Rules of Appellate Procedure (Rule 15(a) et seq.). A notice of appeal must also be served upon the Attorney General, Criminal Division, Attention: General Litigation.

________________________ ___________________________
Date Hearing Examiner

- -

APPENDIX 2 - STANDARD WORDING ON ORDERS [EXAMPLES]

I. PAROLE HEARINGS (INITIAL AND SUBSEQUENT; INCLUDING FIFTEEN YEAR RECONSIDERATION).

(A) "Parole effective after service of ( ) months (date)" (used only when date is within six months from date of hearing)

(B) "Continue to a Presumptive Parole after service of ( ) months (date)" (used when date is later than six months from date of hearing)

(C) "Continue to a Presumptive Parole after service of ( ) months (date) or Continue to Expiration, whichever comes first." [use when parole prior to the statutory release date (sentences of less than five years) or prior to the two-thirds date (sentences of five years or more) is desired, but extra good time may result in even earlier release].

NOTE: The following conditions, among others, may be added:

". . . with placement through a Community Treatment Center recommended."

". . . to a (concurrent) (consecutive) sentence."

". . . provided the committed fine is paid or otherwise disposed of according to law."

". . . to the actual physical custody of detaining authorities only." If not taken into custody on the detainer, place on the next docket for a special reconsideration hearing.

". . . to the actual physical custody of detaining authorities, or if detainer is not exercised parole (presumptive parole) to the community effective (date)." Allow an additional 30 days for release planning.

". . . to the actual physical custody of immigration authorities, or if detainer is not exercised parole (presumptive parole) to the community effective (date)." Allow an additional 30 days for release planning.

NOTE: When parole is to a detainer, the written reasons given should be associated with the date of release to the detainer; the reason for setting the alternative date of parole to the community 30 days later is to allow for release planning. If a detainer is withdrawn sufficiently in advance to make this additional 30 day period unnecessary, the institution should notify the Commission.

(D) "Continue for a Fifteen-Year Reconsideration Hearing in (month & year)."

(E) "Continue to Expiration" [use where parole prior to the statutory release date (sentences of less than five years) or prior to the two-thirds date (sentences of five years or more) is not desired]. NOTE: For purposes of determining quorum requirements for actions under §2.24(b)(2), §2.25, or §2.28(a) the statutory release date should be used for sentences of less than five years and the two-thirds date should be used for sentences of five years or more.

II. SPECIAL CONDITIONS

(A) ". . . with the special drug aftercare condition"
NOTE: The special parole condition must be typed out in full on the Notice of Action immediately after the order, i.e., "You shall participate as instructed by your Probation Officer in a program approved by the Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing to determine if you have reverted to the use of drugs."

(B) ". . . with the special alcohol aftercare condition"
NOTE: The special alcohol condition must be spelled out, "You shall participate in a community based program for the treatment of alcoholism as directed by your U.S. Probation Officer."

(C) ". . . with the special mental health aftercare condition"
NOTE: The special mental health aftercare condition must be spelled out, "You shall participate in an in-patient or an out-patient mental health program as directed by your U.S. Probation Officer."

(D) ". . . with the condition that you reside in a Community Treatment Center until. . ."

(E) ". . . with special supervision for ( ) months" (not to exceed six months).

(F) ". . . with the special condition regarding [fines, restitution orders, court ordered child support or alimony payments].

Note: This special condition must be typed out in full on the Notice of Action immediately after the order, i.e., "You shall make a diligent effort to pay your outstanding [fine] [restitution order] [court ordered [child support] [alimony] payments] and you shall provide such financial information as may be requested, by the United States Probation Officer, relevant to the payment of the obligation. If you are unable to pay this obligation in one sum, you will cooperate with the U.S. Probation Officer in establishing an installment payment schedule.

III. PSYCHIATRIC CONTINUANCE

(A) "Continue to (one year later) or until such time as the medical staff shall advise the Regional Commissioner that subject is sufficiently recovered mentally to participate in a parole hearing." (According to regulations the institutional staff is required to submit a progress report at least every six months on the mental health of the inmate)

IV. ORIGINAL JURISDICTION (Use Two Orders)

(A) "Refer to Regional Commissioner for Original Jurisdiction consideration."

(B) (Alternate Decision) "Continue, etc."

V. ORIGINAL JURISDICTION - ORDER OF REGIONAL COMMISSIONER

(A) "Your case has been designated as Original Jurisdiction and referred to the National Commissioners for decision."

(B) "Your case has been previously classified as Original Jurisdiction - Refer to National Commissioners for declassification."

(C) "Your case has been previously classified as Original Jurisdiction - Refer to National Commissioners for declassification and reconsideration pursuant to 28 C.F.R. §2.24(a)."

VI. RESCIND PAROLE EFFECTIVE DATE (Use two orders)

(A) 1. "Rescind Parole Grant effective (date)."

2. (a) "Continue to a Presumptive Parole (date). This requires service of an additional ______ (mos.)(days)."

(b) "Parole effective (date). This requires service of an additional ______ (mos.)(days)."

[NOTE: Use if within six months from the date of the hearing]

(c) "Continue to expiration. This requires service of an additional ______ (mos.)(days)."

(B) 1. "no decision to rescind."

2. "Parole effective (date)."

NOTE: Instruct typists to copy the findings of fact and the basis for each finding on the Notice of Action.

VII. ACTIONS AT STATUTORY INTERIM HEARING

(A) "No change in Presumptive Parole date (______)."

(B) "No change in Fifteen-Year Reconsideration date (______)."

(C) "No change in Continuance to Expiration."

(D) "No change in Presumptive Parole date." "Parole effective date (____)."

[[Note: If the original decision included a special condition or detainer wording, this condition or wording is to be added.]]

(E) "Reopen and retard (or rescind) Presumptive Parole date." SPECIFY NEW ACTION. NOTE: In cases of significant disciplinary infractions only.

(F) "Reopen and advance (Presumptive Parole date) (Continue to Expiration)." SPECIFY NEW ACTION. NOTE: In cases of exceptional circumstances or superior program achievement only.

VIII. PRE-RELEASE REVIEW (ON THE RECORD)

(A) "No change in Presumptive Parole and Parole effective (date)."

(B) "Reopen and retard Presumptive Parole date of (date) [up to 90 days for disciplinary reasons; up to 120 days for program planning] and Parole effective (date)."

(C) "Reopen and retard Presumptive Parole date of (date) and schedule for a rescission hearing (on the next appropriate docket) (upon return to a federal institution)."

(D) "Reopen and advance Presumptive Parole date of (date) for superior program achievement and Parole effective (date)."

IX. REOPENINGS

(A) "Reopen and (Parole effective, Continue, etc.)"

(B) "Pursuant to 28 C.F.R. §2.28(f), reopen and schedule for a special reconsideration hearing to consider new adverse information."

(C) "Pursuant to 28 C.F.R. §2.28(f) and §2.30, reopen [issue warrant] and schedule for a special reconsideration hearing to consider new adverse information."

(D) "Pursuant to 28 C.F.R. §2.28, Reopen and Continue to Expiration." Note: Use in cases in which a presumptive parole date has been ordered and the inmate subsequently receives a sentence reduction which will result in release prior to the presumptive parole date given. Indicate on the NOA that this action is non-appealable. In the 'Reasons' section state that "the Commission's evaluation of your case remains the same. Your sentence reduction will result in mandatory release prior to the previously set presumptive parole date".

X. DISPOSITIONAL RECORD REVIEW

(A) "Let the Detainer Stand and Schedule a Dispositional Revocation Hearing --

...to coincide with the initial hearing on your new federal sentence, or upon release from your new sentence, whichever comes first."
...during (mo/yr) or upon return to federal custody, whichever comes first."

(B) "Withdraw detainer and close case." (where expiration date has passed)

(C) "Withdraw detainer and reinstate to supervision when released from present sentence."

XI. DISPOSITIONAL REVOCATION/COMBINED DISPOSITIONAL REVOCATION/INITIAL HEARINGS

Two orders should be used, with the first addressing the revocation and street time decisions, and the second addressing the recommencement/reparole decision. The following examples pertain to prisoners with sentences other than YCA, NARA, Canadian/Mexican transfer cases. In YCA, NARA, and Canadian/Mexican transfer cases, the federal term runs uninterruptedly (unless absconding is also found as a violation of parole) so the wording concerning the commencement of the unexpired portion of the federal sentence is to be deleted; and the wording as to the street time credit changed appropriately.

(A) NEW STATE SENTENCES (Dispositional Revocation Hearing Orders)

Revoke parole; none of the time spent on parole shall be credited. The unexpired portion of your federal sentence shall commence upon your release from state custody or upon federal reparole to your state sentence, whichever comes first;

...(Continue for a presumptive) parole from the violator term after service of ____ months (date) [or by expiration of sentence, whichever comes first].

...Continue for a fifteen-year reconsideration hearing (mo/yr 15 years from date of dispositional hearing).

(ADD AT THE BEGINNING OF THE 'REASONS' SECTION)

...If you are released from state custody prior to the above date, you will be taken into federal custody. You will then have a presumptive parole on the above date unless you are released earlier by expiration of sentence less good time. If you are still in state custody as of the above date, you will have a presumptive parole from the violator term to your state sentence on the above date.

...If you are released from state custody prior to the above date, you will be taken into federal custody and provided a fifteen year reconsideration hearing on the above date, unless you are released earlier by expiration of sentence less good time. If you are still in state custody as of the above date, you will be given a fifteen year reconsideration hearing in state custody.

...Number of days owed on federal parole violator term = (_____) (use for sentences where street time is forfeited)

...Maximum expiration date on federal parole violator term is (______). (use for YCA, NARA, Mexican/Canadian Treaty cases)

...In addition, you have been scheduled for an interim record review during (mo/yr); if you are returned to federal custody before that time an interim hearing will be conducted during the month scheduled for the record review.

NOTE: If it is evident that the time remaining on the new sentence plus the amount of time remaining on the violator term will fall short of the appropriate 'time-served' decision, the order may be modified to reflect commencement upon release from the new sentence and a 'continue to expiration' on the violator term.

(B) NEW FEDERAL SENTENCES

1. Orders for Combined Initial/Dispositional Revocation Hearings

Revoke parole; none of the time spent on parole shall be credited. The unexpired portion of your original federal sentence will commence upon your release by parole or mandatory release from the new sentence.

...(Continue for a presumptive) parole on the new sentence after service of months (date); (Presumptive) parole on the violator term as of the same date.

...Continue to expiration on the new sentence; Continue to expiration on the violator term.

...Continue to expiration on the new sentence; Continue to a presumptive parole on the violator term (date) [or by expiration of sentence less good time, whichever comes first] NOTE: Add the wording in brackets if there is a question as to whether expiration of sentence will occur prior to the appropriate presumptive parole date.

...Continue to a fifteen-year reconsideration hearing on the new sentence; Defer consideration on the violator term.

...Continue to expiration on the new sentence; Continue to a fifteen-year reconsideration hearing during (mo/yr 15 years from date of dispositional revocation hearing) on the violator term.

NOTE: Use the reparole guideline worksheet and add wording so that the offense behavior statement references both "new offense/parole violation behavior"; the months in custody reflect "federal" or "state and federal" as appropriate; the guideline reference is to "Parole/Reparole Guidelines". The severity rating should reflect all aspects of the parole violation behavior, even if there were instances of criminal conduct involved in the parole violation which are not a part of the offense for which the new federal sentence was imposed.

2. Orders for Dispositional Revocation Hearings Not Combined with Initial Hearings

Revoke parole; none of the time on parole shall be credited. The unexpired portion of your original federal sentence shall commence upon your release from your new sentence or upon reparole to your new sentence, whichever comes first;

...(Continue for a presumptive) parole from the violator term after service of ____ months (date).

...Continue for a fifteen-year reconsideration hearing (mo/yr) (15 years from date of dispositional revocation hearing).

NOTE: If it is evident that the time remaining on the new sentence plus the amount of time remaining on the violator term will fall short of the appropriate 'time-served' decision, the order may be modified to reflect commencement upon release from the new sentence and a 'continue to expiration' on the violator term.

XII. TERMINATION OF SUPERVISION

(A) "Terminate supervision effective (date)."

(B) "Continue under supervision [Five Year Hearings Only].

There is a likelihood that you will engage in conduct violating a criminal law." [The Notice of Action and the Hearing Summary should also specify the basis for this finding of likelihood.]

XIII. MANDATORY PAROLE (AT TWO-THIRDS OF TERM)

(A) "Mandatory Parole at two-thirds of the term."

(B) "Deny Mandatory Parole and Continue to Expiration" (use when there is a finding after a hearing that there have been serious violations of institutional rules or there is a likelihood of further criminal conduct).

(C) "Schedule for a Mandatory Parole Hearing on the next docket."

XIV. REVOCATION HEARINGS (Use three separate orders)

(A) With Regard to Revocation

1. "Revoke parole"
2. "no finding of violation"
3. "the violation(s) found deemed not sufficient for revocation"

(B) With Regard to Service of the Term

1. "All of the time spent on parole shall be credited." (Use when there are administrative violations only, and no absconding or failure to report)
2. "Time spent on parole from date of release to (date on which absconding status began) shall be credited." (Use when there are administrative violations only and there are absconding or failure to report)
3. "None of the time spent on parole shall be credited." (Use when there is a criminal conviction)
4. "No credit on the sentence shall be given for the period beginning (   ) and ending (   )." (Use in YCA, NARA, and Mexican/Canadian Treaty cases - absconding cases only).

(C) With Regard to Continuance or Reinstatement

1. "Continue [to a Presumptive Parole after service of (   ) months (date), for a fifteen-year reconsideration hearing, or to expiration] if no 'effective parole date' is established."
2. "Reinstate to supervision forthwith (after review and concurrence by Regional Commissioner.)"

3. "Subject to be released and case closed." (use when the expiration date has passed) (after review and concurrence by the Regional Commissioner)

NOTE: Substitute the words "Mandatory Release" for "Parole" where indicated.

XV. NATIONAL APPEALS BOARD

(A) "Decision dated ( ) Affirmed"

(B) "Decision dated ( ) Modified"
(state new action)

(C) "Decision dated ( ) Reversed"
(state new action)

(D) "Original Jurisdiction Classification dated ( ) reversed. Case declassified."

VI. CASES WITH UNSATISFIED RESTITUTION ORDERS

(A) The following wording on the Notice of Action shall be added to each presumptive/effective parole case: "If you have not satisfied the restitution order prior to release, a reasonable plan of payment (or performance of services, if ordered) must be included in your parole release plan. If it is determined that you have the ability to satisfy the restitution order prior to release, but have willfully failed to do so, approval of your release plan shall be contingent upon your first satisfying the restitution order."

- -

APPENDIX 3 - PRELIMINARY INTERVIEW PROCEDURES FOR PROBATION OFFICERS

SUMMARY REPORT OF PRELIMINARY INTERVIEW

NAME:
REGISTER NUMBER:
TYPE OF RELEASE:
DATE WARRANT ISSUED:

DATE OF INTERVIEW:
PLACE OF INTERVIEW:
INTERVIEWING OFFICER:

I. PROCEDURES FOLLOWED: (Specify date warrant was executed, date your office was notified of warrant execution, date of your first contact with alleged violator, and note here any reasons for delay which may have arisen and your actions with regard to them.)

II. WITNESSES PRESENT: (List names and addresses. Note any request for an adverse witness that you denied and your reason. Also note whether any requested witness failed to attend.)

III. REVIEW OF CHARGES:

Charge No. 1: (State the charge as it appears on the warrant application and whether the alleged violator admits or denies the charge.)

Parolee's Evidence: (Summarize the parolee's explanation of the charge, and the documents and/or witness statements offered.)

Adverse Witnesses: (Summarize the statements of adverse witnesses in attendance. Note and attach to the report any written statement offered in place of a personal appearance. Do not attach copies of reports which have already been furnished to the Commission.)

Charge No. 2: (As Above.)

Other Admitted Violations: (State with specificity the circumstances of the violation admitted, including date, time and place.)

IV. COMMUNITY RESOURCES: (Summarize parolee's activities during the time span since the last adjustment report to the time that the Commission's warrant was executed, and the implications for community adjustment, if reinstated. The summary should generally include those adjustment factors covered by the standard parole supervision progress report form F-3. List proposed residence, employment, and other community resources available to this parolee if reinstated to supervision, including any information presented by the alleged violator relative to his continued standing as a good parole risk.)

V. WITNESSES INTERVIEWED: (Summarize the testimony of any witnesses interviewed upon request by the alleged violator.)

VI. RECOMMENDATION AS TO PROBABLE CAUSE: The Interviewing Officer shall give recommended finding with respect to each charged violation, as to whether probable cause has been established to believe the prisoner has violated his parole.

______________________ (DATE)

______________________ (INTERVIEWING OFFICER)

CONFIDENTIAL PAGE (For the Parole Commission Only)

VII. INTERVIEWING OFFICER'S EVALUATION: The Interviewing Officer may at his option give his evaluation of the alleged violator's responses and the alleged violator's continued standing as a good parole risk in light of the charges listed on the warrant application. Other confidential information may be discussed in this section only. Material in this section may be withheld from the alleged violator only to the extent that it is exempt from disclosure under 18 U.S.C. §4208(c)(1), (2) and (3); 28 C.F.R. §2.55(c)(1), (2) and (3); and 28 C.F.R. §2.56(c)(1), (2) and (3).

______________________ (DATE)

______________________ (INTERVIEWING OFFICER)

UNITED STATES PAROLE COMMISSION

NAME:______________________ DATE OF INTERVIEW:______________

REGISTER NUMBER:________________

PRELIMINARY INTERVIEW CHECKLIST OF PROCEDURAL AND LEGAL RIGHTS

/ / Has received a copy of warrant application (Form H-20).
/ / Advised of right to counsel and completed CJA-22.
/ / Completed Form F-2, Part I.
/ / All adverse witnesses have been asked to appear and have either refused or are present at this time, or good cause has been stated for refusal to request their appearance.

/ / All charges on Form H-20 (and supplements, if any) read to alleged violator and response (admission or denial) and explanation obtained for each charge.

/ / All documentary evidence described in Form H-20 is available and has been disclosed to the alleged violator (or, in the case of reports from confidential informers or other sensitive material, summarized to the degree necessary to permit an adequate response to the allegations).

/ / Recommended decision as to whether there is probable cause to believe that a violation has occurred, with specificity as to each charge, made known to the alleged violator at the conclusion of the interview.

/ / Advised that the Commission will notify him of its final decision as to probable cause by letter following receipt of the Interviewing Officer's report.

/ / Completed Form F-2, Part II, at conclusion of interview.

- -

Re:__________________________
Reg. No.:______________________

Dear________________:

This is to inform you that the Regional Commissioner has found probable cause to believe that you have violated the conditions of your [parole] [mandatory release], and has ordered a hearing to determine whether or not your release should be revoked. The purpose of this hearing will be to make a final determination as to whether or not you violated the conditions of your parole as charged, and if so, whether the violations warrant revocation. If revocation is ordered, the Commission will also determine whether to reparole you or to require service of all or any part of your violator term.

The specific charges upon which this finding is based are charges [list charges by number]. The evidence relied on is indicated on the warrant application and in the summary report of the preliminary interview [do not refer to the summary report if no probable cause was found by the interviewing officer].

Your transfer to a federal institution has been ordered for the purpose of holding a revocation hearing following your arrival at that institution.

The Commission has ordered that a local revocation hearing be held in [specify district]. [This hearing has been tentatively scheduled for (   ), 19), at (   ) (a.m.) (p.m.)]. [The date and time of your hearing will be arranged].*

By copy of this letter, the United States Marshal is instructed to ensure the appearance of the above-named at his revocation hearing.

Sincerely,

Post Release Case Analyst

cc: (Attorney for parolee or mandatory releasee)
cc: U.S.P.O.
cc: U.S. Marshal
cc: (Revocation packet for the institution)

*In local revocation hearings only, the following sentence should be included following the date and time of the hearing: "No new information was presented at your preliminary interview that would warrant your release pending the revocation hearing."

- -

EXCERPTS FROM PROBATION OFFICERS MANUAL

A. PRELIMINARY INTERVIEW.

1. Purpose of Interview. A parolee who has not been convicted of a new crime while under supervision must be afforded a preliminary interview to enable the Commission to determine whether there is probable cause to believe a violation has occurred, and if so, whether a revocation hearing is warranted. Prisoners with new convictions will be taken directly to a Federal institution by the U.S. Marshal, where they will receive a violation hearing, unless the Commission orders a preliminary interview.

Since the conviction of an offense committed while under supervision constitutes "probable cause" that at least one condition of parole or mandatory release was violated, no preliminary interview is required in such instances. In marginal cases, especially where a conviction was for a minor offense and there is a strong possibility that the parolee will be reinstated to supervision, the Regional Commissioner may require a preliminary interview notwithstanding the conviction. Generally, however, a preliminary interview will not be conducted where there is definite information of a conviction. Where the conviction is for minor offense (as minor traffic violations, loitering, or disorderly conduct) and a fine (rather than imprisonment) is the usual disposition, the preliminary interview should be held regardless of the fact that imprisonment could have been imposed.

2. Designation of an Interviewing Officer. When the probation office is notified by the U.S. Marshal that a parolee has been arrested on a Commission warrant and is being held in custody for a preliminary interview, the chief probation officer shall immediately designate a probation officer to conduct the preliminary interview. The probation officer so designated shall promptly visit the parolee and offer to conduct a preliminary interview. This officer must not have supervised the parolee at any time. If no probation officer is available who has not previously supervised the parolee, the chief probation officer shall contact the post release analyst at the appropriate regional office of the Parole Commission relative to the designation of some other official.

3. Place of Interview. If the parolee is arrested on a violator's warrant, the place for the preliminary interview should be arranged with the Marshal who has custody. With cooperation of the Marshal the alleged violator may be interviewed in the probation office or at the jail. The alleged violator remains in the Marshal's custody until further instructions are received from the Parole Commission or the Bureau of Prisons. If the parolee is responding to a summons, the probation officer will make the arrangements for the place of the interview.

4. Role of Interviewing Officer. The role of the interviewing officer shall be to act as an impartial fact finder. He should not discuss the case with the parolee's supervising officer prior to the interview. At the interview, the interviewing officer must make a thorough examination of the facts and should question all witnesses present, including the parolee and his probation officer if necessary to clear up any unexplained matters that bear upon the alleged violations. His summary report to the Commission must be a complete report of the results of the interview, and serves as the basis of the Commission's final probable cause decision. In addition, the interviewing officer should provide the Commission with a status report which covers the time span since the last adjustment report to the time that the Commission's warrant was executed. This report gives the Commission updated information concerning the parolee's overall adjustment while on supervision. If the parolee is an absconder, this updated information enables the Commission to determine if the parolee's behavior during his absence from official supervision should impact on their revocation decision.

5. Initial Visit. Two forms are presented at the initial visit of the interviewing officer: The Preliminary Interview and Revocation Hearing Form (Form F-2) and the Form CJA-22. The parolee may be given copies of these forms if requested.

a. Form F-2. This form is in two parts. Part I is presented at the initial visit. It advises the parolee of the procedures to be followed and of his rights to obtain voluntary witnesses and/or an attorney. He may also ask that adverse witnesses be present at the postponed preliminary interview. If the parolee wishes to proceed with the interview he must acknowledge that he has been informed of his rights and waives his right to an attorney, if he has none. Part II is not completed until after the preliminary interview itself has been conducted. The interviewing officer must be thoroughly familiar with the explanation of the parolee's procedural and legal rights contained in the Form F-2, and must read or explain them before requesting the parolee to make his choice.

b. Appointed Attorney (Form CJA-22). If the parolee desires a postponement and being without funds, wishes to obtain a court-appointed lawyer, he completes both Part I of the Form F-2 (to request a postponement) and Form CJA-22 to request the court to appoint counsel. Form CJA-22 is then taken to the local U.S. District Court by the interviewing officer.

If the parolee does not desire appointment of counsel, he should initial Item 1 and sign the Form CJA-22. The Form should be witnessed by the probation officer and retained in the file. The financial information need not be completed unless the parolee is requesting appointment of counsel.

c. Postponement. No postponement shall exceed 30 days without permission of the Parole Commission regional office. The probation officer shall contact the parolee's attorney as soon as he has been retained or appointed, and a date set for the interview.

d. Refusal by the Alleged Violator to Sign Forms or to Respond to the Charges. If a parolee refuses to sign forms presented to him he should be informed of his rights to a postponement, to an attorney, and to request a local revocation hearing if he denies the charges and has not been convicted of a new offense while under supervision. If he persists, the interview should proceed, and he should be expressly informed by the probation officer that his refusal to sign the Form F-2 will be construed as a waiver of his opportunity to have a local revocation hearing. If the parolee makes no response to the charges he should be informed that a probable cause decision will be based on the evidence presented at the interview. The probation officer should also attach or place directly on the form a detailed statement attesting that the parolee was advised of his rights but refused to sign the form.

6. Conducting the Interview.

a. Reading the Charges. The "Warrant Application" (Form H-20) is attached to the Warrant and serves as the official statement of the charges against the parolee. A copy of the Warrant Application is given to the parolee by the Marshal upon arrest. The Warrant Application describes the reports upon which the Commission is prepared to rely upon in revoking parole. These documents must be shown the parolee just prior to the reading of charges which they support. In the case of absconders arrested beyond their districts of supervision, these documents may not be available when the probation officer is first notified of the arrest. In such cases, the designated officer will immediately contact the Commission's regional office by telephone, requesting the forwarding of the necessary documents. These documents must be available at the preliminary interview. The interview commences with the reading of each charge, the documentary evidence referred to in the warrant application pertaining to that charge is presented to the parolee for his examination. The interviewing officer receives the document back before proceeding with the interview. The alleged violator will then be offered the opportunity to respond to each charge as it is read. In certain cases it will be obvious that a document should not be disclosed. Stated briefly, the three categories of sensitive information are:

(1) Material revealing the identity of a confidential source;
(2) Material, the disclosure of which would harm any person, physically or otherwise;
(3) Material comprising a diagnostic or psychiatric evaluation.

For example, a probation officer's letter discussing allegations, made to him by a member of the parolee's family or other confidential source, that the parolee was engaged in the sale of heroin need not be shown at the preliminary interview. In such cases, the basic charge of parole violation should be extracted from the contents and stated orally to the parolee by the interviewing officer in order to permit a response thereto. In the case of the letter described above, the interviewing officer need only state in general terms that the parolee is alleged to have bought or sold heroin during a certain period of time, and that the letter itself was reported in confidence and cannot be shown.

Material not directly supportive of the charges is irrelevant and need not be shown. In the case of a letter containing, for example, sensitive psychiatric material in addition to an otherwise disclosable statement of the nature of violation, those circumstances should be read verbatim and the rest simply omitted, without further need for summary. (The officer writing the letter may be consulted on the problem of disclosure so long as the merits of the case themselves are not discussed).

Copies of documents are not to be given under any circumstances. The parolee may request copies in advance of a revocation hearing from the Commission's regional office.

b. Sufficiency of the Evidence to Support a Recommended Decision. Under the Supreme Court decision in Morrissey v. Brewer (1972), the Commission may base a revocation decision on documentary evidence including letters, affidavits, and other material that would not be admissible in a criminal trial. Thus, for example, a conviction is not required to support a finding of probable cause to believe that the parolee has committed a violation of the law. Similarly, hearsay testimony (reporting what another person, not present, has said concerning the parolee), may be relied upon in arriving at a finding of probable cause, as well as a decision to revoke parole. For example, if an adequate arrest report is available, the arresting officer need not be present to affirm the charges for which the parolee was arrested. It must be kept in mind that this is only a preliminary finding. Evidence which is sufficient to support a request for a warrant will normally be sufficient to support a finding of probable cause if it persuades the interviewing officer that there is a likelihood that a violation has occurred.

c. Witnesses at the Preliminary Interview.

i. Request for Witnesses to Appear at a Postponed Preliminary Interview. The parolee may present voluntary witnesses and may request the presence of adverse witnesses for the purpose of cross-examination. An adverse witness is defined as any person (including the parolee's probation officer) who has given information upon which revocation may be based. This limits such witnesses to those referred to on the Warrant Application or in the documents specified therein. A request for adverse witnesses must be in writing, either on Form F-2 at the time the parolee requests a postponement, or by letter (e.g., from an attorney). The interviewing officer shall request the presence of such witnesses unless there is good reason why they cannot appear (e.g., outside the district, confidential informer, etc.) and shall indicate the reason for such refusal in his summary report.

ii. Subpoenas. If an adverse witness refuses to appear upon request, and a good reason is not given (or such witness is unlikely to appear), the Commission's regional office should be notified relative to the issuance of a subpoena. Subpoenas are normally issued only for adverse witnesses, and issuance is discretionary upon the part of the Regional Commissioner.

iii. Field Interviews. A voluntary witness who cannot, for some reason, attend the interview, may be interviewed by the officer prior to a postponed preliminary interview if the parolee so requests. The officer's written report of that interview shall be considered at the postponed preliminary interview as a part of the record, and forwarded to the Commission with the summary report. Information relevant to the charges must be disclosed to the parolee during the interview.

iv. Testimony and Questioning of Witnesses. If after reading of a charge and the receiving of the parolee's response thereto, the parolee or his attorney wishes to question the adverse witnesses present, he may do so, provided the interviewing officer limits irrelevant or repetitious questioning. Before the questioning of an adverse witness begins, the interviewing officer should discuss the response with the parolee to elicit the parolee's version of the facts, if not explained previously. The relevancy of the questioning will be readily apparent from its relation to the explanation received. It should be stressed at all times that a co-equal purpose of the preliminary interview is to hear the parolee's side of the story, as well as to review the evidence against him. All witnesses may be questioned as to whether or not a violation occurred, as well as to elicit mitigating circumstances if the parolee is not seriously contesting the facts of violation. The interviewing officer may question any witness to clear up any unresolved point of fact.

v. Exclusion of Witnesses. At the parolee's request, the interviewing officer may require adverse witnesses to step outside the hearing room while the parolee or his voluntary witnesses give their testimony. If done, the parolee's witnesses as well are to be excluded during the testimony of the adverse witnesses. This is a standard precaution to insure that witnesses are not influenced in their testimony by testimony already given. This procedure may also be initiated by the interviewing officer.

d. Completion of Form F2, Part II. After the charges are read and the evidence presented, the parolee must sign Form F-2, Part II in order to indicate whether he wishes to request a local (if he is eligible) or institutional revocation hearing in the event of probable cause finding. If he requests a local hearing, he must write on the Form F-2 the names of the adverse witnesses whose appearance he desires.

e. Checklist. A checklist of procedural and legal rights is available to aid the interviewing officer in the conduct of the interview. It is not necessary to read the checklist out loud or to complete a copy for retention in the file.

f. Recommended Decision of Interviewing Officer.

i. Informing the Parolee of the Recommended Decision. At the conclusion of the interview, the interviewing officer shall inform the parolee that the Parole Commission will make the decision as to probable cause. The interviewing officer then informs the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated a condition or conditions of his release, and shall specify the charges upon which he relies in his recommended decision. The parolee's own response, including an admission, is considered evidence for this purpose.

ii. Nature of Recommended Decision. This recommended decision is purely a fact finding decision. In order to support a finding of no probable cause, the officer must be satisfied that no violation has occurred. While the interviewing officer may recommend that the Commission reinstate the parolee notwithstanding the violation (on the basis of mitigating evidence presented at the interview), the officer is still obliged to recommend a finding of probable cause if the evidence that a violation has occurred has not been discredited by the officer's own examination or by the parolee's response. Most importantly, when the officer finds probable cause, he must state exactly what violation he has found. He must make his finding clear in his report to the Commission if his finding differs in any way from the way the violation is described in the Warrant Application.

g. Summary Report. Promptly following the interview, regardless of the finding, a Summary Report must be prepared and sent to the Commission's regional office (including the completed Form F-2). One copy of the report (minus the confidential section) shall be given to the parolee, and to his attorney, if any, and one copy retained for the probation office file. The format for this report and the contents can be found in Appendix 4.18 of the U.S. Probation Officers Manual. The outer envelope must be marked: URGENT: SUMMARY OF PRELIMINARY INTERVIEW. The parolee shall be held in custody pending notification of the Commission's decision unless appearing as a result of an issue of a summons.

h. Recommended Finding of No Probable Cause. In the event the interviewing officer recommends a finding of no probable cause to believe that any violation has occurred, the Commission's regional office is to be notified immediately by telephone to ascertain whether the Regional Commissioner will confirm the recommended decision and order the immediate release of the parolee. If the Regional Commissioner finds probable cause notwithstanding the recommended decision, the parolee will be promptly notified and held for a revocation hearing.

B. LOCAL REVOCATION HEARING.

1. Arrangements. When it has been determined that the Commission will conduct a local revocation hearing, the regional office will advise the Marshal and the probation officer of the location of the hearing. Since this is a contested procedure, there is a need for facilities which will insure privacy and be adequate for the taking of testimony. In cooperation with the probation officer, the Marshal is asked to arrange for suitable quarters. If possible, the Commission prefers to use the nearest probation office, the quarters of a United States Magistrate, or other suitable place in the nearest probation office or the nearest Federal court building, provided the place is not a jail or detention facility.

2. Notification of Hearing. After arrangements are completed, the Parole Commission will inform the probation officer of the exact time and place of the hearing. By copy of the letter the attorney, if named, the Marshal, and the alleged violator will also be officially notified.

3. Reporting Service. Ordinarily, the examiner will use recording equipment for the purpose of conducting the hearing; however, there may be instances when the Regional Commissioner may ask for reporting services in lieu of recording devices.

4. Adverse Witnesses. When the parolee denies he violated parole and requests that adverse witnesses be present for confrontation, the probation officer should ask requested witnesses who have supplied adverse information bearing on the alleged violation to appear at the revocation hearing. If any witnesses will not attend or appear unlikely to attend, notify the Commission relative to issuance of a subpoena. The Commission will not issue subpoenas for any witness, adverse or non-adverse unless the Commission finds a need for such witness and the witness cannot or will not appear upon request, and will not submit an adequate signed statement in lieu of personal testimony. The need for an adverse witness who is not to be found within the district will be determined by the Commission on the basis of the Summary Report and the evidence submitted to it. A signed statement may be required of such witnesses (including a U.S. probation officer, if outside the district) in lieu of a personal appearance.

5. Non-Adverse Witnesses. If the parolee desires the issuance of a subpoena for a witness to appear on his behalf, the parolee must submit a separate showing of need for the testimony of such witness, and must show that the requested witness will not voluntarily appear or offer a written statement giving his testimony other than under subpoena. Where appropriate, the Commission may request that such witnesses be interviewed by a U.S. probation officer in the locality, in lieu of requiring a personal appearance at the revocation proceeding.

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APPENDIX 4 - STANDARD FORMATS FOR REFERRAL TO NATIONAL COMMISSIONERS

(A) ADMINISTRATIVE REVIEW (28 C.F.R. §2.24)

TO: National Commissioners

FROM: ____________________ Regional Commissioner, (____________) R.O.

RE: ____________________ Reg. No.________________________

A. This case is referred pursuant to 28 C.F.R. §2.24.

B. Panel Recommendation:

C. Commissioner's Evaluation: [Reminder: codefendant sheets should be included in the file.]

D. Commissioner's Order and Vote:

E. Reasons: Give reasons as they should appear on the Notice of Action.

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(B) ORIGINAL JURISDICTION (28 C.F.R. §2.17)

TO: National Commissioners

FROM: ____________________ Regional Commissioner, (____________) R.O.

RE: ______________________________ Reg. No.: ____
(Name)

A. This case is referred pursuant to 28 C.F.R. §2.17. [give category of referral: (b)(1) National Security; (b)(2)(i) Unusual Degree of Sophistication or Planning; (b)(2)(ii) Large Scale or Continuing Criminal Enterprise; (b)(3) Unusual Attention; (b)(4) Long Term Sentence] based upon the following: [Give Supporting Evidence for Referral].

Note: For (b)(2)(i), supporting evidence would include: the number of trips made to plan or case an operation; use of electronic or mechanical devices; use of forged documents or paper corporations to promote stock or mail frauds; the use of private planes, boats or multiple motor vehicles to carry out a plan.

For (b)(2)(ii), supporting evidence would include: the length of time the operation was in existence; the number of co-conspirators involved; the monetary amount of drugs, stocks, or other merchandise involved.

For (b)(3), the source of the unusual attention should be cited with specificity: newspaper articles; interest by groups or persons (letters, telephone calls, teletypes).

B. Regional Commissioner Evaluation, Order and Vote: [Reminder: codefendant sheets should be included in the file.]

C. Reasons: Give reasons as they should appear on Notice of Action.

NOTE: In considering cases for possible original jurisdiction consideration please consider the total case picture. Because one or more of the examples cited as supporting evidence is present does not mean that the case is original jurisdiction. Each case should be considered on an individual basis and the examples used are only some points to look for.

Notice To Department of Justice
(Original Jurisdiction Cases)

MNEMONIC CODE: (Obtain from Chief of Case Operations)

TO: ORGANIZED CRIME AND RACKETEERING SECTION
ATTN: DAVID MARGOLIS, CHIEF
DEPARTMENT OF JUSTICE - ROOM 2515

FROM: (______________________________)
REGIONAL COMMISSIONER

(______________________________) REGIONAL OFFICE

SUBJECT: O.J. DESIGNATIONS

THE FOLLOWING CASE(S) HAS (HAVE) BEEN DESIGNATED O.J. AND IS (ARE) BEING FORWARDED TO THE NAB, WASH., D.C., FOR PAROLE CONSIDERATION:

DATE OF BIRTH:
F.B.I. #:
OFFENSE COMMITTED:
DATE OF SENTENCE:
SENTENCING DISTRICT:

RESPONSE WILL BE MADE WITHIN THREE DAYS BY THIS UNIT TO BOTH THE CENTRAL OFFICE AND THE REGIONAL OFFICE.

- -

(C) SAMPLE LETTER REQUESTING FORM 792

Date:

Re: Name:
Register Number:
Criminal Case Number:
Federal Institution:

Dear [Mr.] [Ms.] [Name of Assistant U.S. Attorney]:

In reviewing our records on the above-named prisoner to prepare for a scheduled parole hearing, we note that we have not received a *Report on Convicted Prisoner By United States Attorney* (Form USA-792) (see U.S. Attorneys' Manual 9-34.220). Our information appears to be incomplete without further elucidation from your files.

On behalf of the Parole Commission, this is to request that you send a Form USA-792 Report directly to this office with a copy to the [name of institution] by [date]. This report is an important source of information for the Parole Commission and completion of this report is required by Department of Justice procedures. Note that you are not obliged to make a recommendation about parole if you choose not to.

Under its regulations, the Commission must consider the nature and circumstances underlying the defendant's offense behavior, including behavior beyond the offense of conviction if there is substantial evidence that such additional criminal conduct occurred. Therefore, please describe the nature and specific circumstances of the offense (including any aggravating or mitigating factors) and, especially for cases resolved by guilty pleas, any additional offenses committed by the prisoner. If there are such additional offenses or aggravating circumstances, it is important to state what evidence there is to support them, including any admissions by the prisoner.

[If applicable, insert a paragraph here stating what particular information we have a special need for in the specific case].

Your assistance in this matter is greatly appreciated. If you have any questions or any special concern regarding non-disclosure of sensitive information, do not hesitate to call [me] [(name of RA), the Regional Administrator] for this Region at FTS XXX-XXXX.

Sincerely,

[Name]
[Title]
U.S. Parole Commission

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APPENDIX 5 - PAROLE/MANDATORY RELEASE SUPERVISION GUIDELINES

OBJECTIVE: The primary objectives of parole supervision are: (1) To protect society from further criminal activities by the parolee; and (2) To assist the parolee in becoming a law-abiding, self-sustaining, responsible member of society.

To achieve these objectives the probation officer (1) counsels with the parolee and renders specific services to help him resolve his problems and needs; (2) utilizes and coordinates the resources and facilities of the community; (3) attempts to instill a public understanding of the meaning of parole and encourages the community's participation in the parole program; and (4) assess systematically the results of his efforts.

Preliminary Pre-Release Planning - Pre-release planning - the cooperative effort of the institution, the Parole Commission, the probation office, and the community is the basis for case analysis, evaluation, and determination of a suitable parole plan to assure adequate protection to the community and to meet the problems, needs and concerns of the parolee. In specific cases the Commission may require special conditions of supervision. The institution will send a parole plan to the probation officer for investigation, evaluation, and recommendation (including any recommendation for modification). The plan will cover the essential elements set forth below, as appropriate.

Release Plan --

1. Residence (Specify plan and indicate attitude of prisoner toward those he will be living with or near; where known, specify attitude of family or friends involved in residence plan).
2. Education (specify plans regarding continuing education as it relates to release employment, future employability, and vocational interests or activities).
3. Employment (specify immediate employment plans and capability regarding same and state relationship to vocational training or industrial training, where indicated, specify assistance planned or needed to obtain employment).
4. Community services (specify, as appropriate, participation in community service programs, i.e., family counseling, AA; psychiatric/psychological counseling, anti-narcotic testing, etc.).
5. Attitude (caseworker's evaluation of inmate's attitude toward parole/ mandatory release conditions).
6. Avocational/leisure interests and activities (specify interests and plans, and as related to past experience).
7. Special condition(s) (recommend any special condition(s) for Commission approval).

Initial Interview -- Prior to the initial interview, the probation officer should review the case file and re-acquaint himself with the parole plan. The initial interview should be held at the earliest possible time following release to explain the supervision plan to the parolee and to offer him guidance and instruction.

Types of Contacts -- The types of supervision contacts are the following:

1. Personal contact. A personal contact is a face-to-face contact between the probation officer and the parolee. The contact should serve to establish constructive relationship with the releasee, assist and evaluate current activities, discover and counsel regarding current problems.

2. Collateral contact. A collateral contact is a telephone or personal contact about the parolee with a person other than the parolee, for example, a family member, friend, adviser, or employer. These contacts may be with family members, friends, employer, community services personnel, community treatment center staff, law enforcement officers, etc. These contacts should serve to obtain information regarding the parolee's present attitude, activities and problems.

3. Group contact. This is a contact with the parolee as a member of a regularly scheduled counseling or discussion group. The contact should serve to

utilize peer influence and to observe the individual's response, as well as to evaluate current attitudes and prospective behavior.

4. Monthly supervision report. Prompt review of information in the monthly supervision report (Form 8) is an essential part of supervision. Information contained in the monthly supervision report may serve to assist the probation officer in determining supervision requirements.

CLASSIFICATION OF CASES: The Salient Factor Score is to be used in classifying parole and mandatory release cases initially received for supervision. Using the risk score, the probation officer determines a level of supervision by referring to the table below. In some cases there are circumstances where the probation officer may need to increase the level of supervision. The supervision level should not be less than the prediction device indicates during the initial 6 months of supervision.

SFS Risk Category	Supervision Level	Minimum Personal Contacts	Maximum Personal Contacts	Collateral Contacts
Poor-Fair-Good	High Activity	1 per month	no maximum	Unlimited
Very Good	Low Activity	1 per quarter	3 per quarter	Unlimited

Supervision Levels There are two levels of supervision - high activity and low activity. The purpose and value of differentially designating cases to one of these two levels is to free the probation officer to direct systematically his skills and energies to those persons in greatest need of services and monitoring.

High Activity Supervision - High activity supervision cases, as reflected in their histories, have usually experienced difficulty in establishing and maintaining personal stability. Accordingly, the high activity supervision level is where probation officers are to direct the greater proportion of their efforts. There is no upper limit on the number of times a given person may be seen in a month's time. All persons in this supervision level, however, must be seen at least once a month. The intent, frequency, and location of personal and collateral contacts should be shaped by the supervision plan.

Low Activity Supervision - Low activity supervision cases, as reflected in their histories, have usually experienced relatively greater success in establishing personal stability. Although occasionally it will be necessary for the probation officer to respond to crisis situations, sustained contact will seldom be necessary. Probation officers are to manage these cases through the use of referred services and collateral contacts. The probation officers should not encourage more than one personal contact per quarter and three personal contacts per quarter should be the exception rather than the rule.

Overrides. Although the Salient Factor Score ordinarily serves to determine the initial super vision level, particular circumstances may be present in low activity cases which justify raising the supervision level to high activity. Override of the supervision level established by the predictive device score will be made only with the approval of a supervisor. There are three possible conditions which justify an override. They are:

I. Aggravated Offense/Offender Circumstances

A. Violence [Present offense or prior record involving violence; or use of weapons in the commission of crime].

B. Notoriety of Offense/Offender [Violation of trust by high ranking public official; Value of crime greater than $100,000; or Crimes endangering national security].

C. Continuing Criminal Conspiracy [Wholesale drug distributor; Member of organized crime; or Major corporate offender].

II. Special Conditions

A. Parole Commission ordered special supervision (Special supervision may be ordered by the Parole Commission for the first 6 months of supervision. In such cases the expected personal minimum contact rate between the probation officer and offender would be at least two personal contacts per month).

B. Drug aftercare program ordered

III. Exceptional Case Circumstances. Exceptional case circumstances are significant social problems characterized by aggravated personal distress which, if left unresolved, would likely subject the community or offender to harm. It is important for the probation officer to recognize that cases initially classified as low risk experience very low violation rates. Therefore, overrides based on exceptional case circumstances will be rare. Although events such as loss of job or separation from a spouse may be distressing to some, an override should be considered only if a person is overwhelmed by these events and unable to cope with such problems. Exceptional circumstances also include a first time youthful offender who exhibits multiple areas of extreme instability which require more than three personal contacts a quarter to carry out the supervision plan.

SUPERVISION PLAN

Based upon pre-release planning, the approved parole plan, and the initial interview, the probation officer will develop an initial supervision plan outlining the relevant problems of the individual, set objectives to be reached in the case, and describe the methods to be employed in attaining the objectives. Justification for any override of the predictive device will be included as part of the supervision plan.

The offender's response to supervision is to be evaluated semi-annually. This case review should describe the degree of progress achieved in meeting previous established objectives, new problems arising in the case, and the supervision plan to meet the current situation.

During the case review a change in the supervision level may be considered. Research indicates that the risk of failure determined by the predictive device is constant for the first 2 years of supervision. Movement to the level of "high activity" may be justified only by a documented pattern of supervision problems. Reduction to "low activity" should be based only on documented experience over time with the offender demonstrating stability at home, on the job, and in the community. All changes in the level of supervision must be approved by a supervisor.

Supervisory Review -- The supervisor plays a key role in assuring that the classification system is understood, correctly administered, and that supervision plans and case reviews are properly completed in a timely fashion. Supervisory review is a quality control function assuring that the statutory responsibilities of supervising offenders are diligently pursued. It is the responsibility of the supervisor to assure the following: all case materials have been reviewed in developing the supervision plan; initial overrides of the supervision level meet the established criteria; problems and objectives are clearly stated in the supervision plan and relevant to the case history and risk the offender represents to the community; methods of intervention reflect the focus and direction of the supervision plan; personal contacts between the probation officer and offender are appropriate to the supervision level and supervision plan; and changes in the supervision levels are based on sufficient information.

Evaluation of Parole Supervision Plan -- At least annually, a review of this overall parole supervision plan will be made, jointly, by the Chief of Probation and the Parole Commission. Such review should consider the extent to which the plan has been carried out; results obtained; suggestions for revision; adequacy of budgetary resources; and future plan of operation.

Field Supervision Evaluation -- Periodically the chief probation officer or the supervisor may find it helpful to accompany the probation officer for observation of personal and collateral contacts in the field.

Reporting of Parole Violations -- Parole violations must be reported to the Parole Commission as outlined in 2.42-01.

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APPENDIX 6 - TEMPORARY/SPECIAL PROCEDURES

A. RETROACTIVITY OF CERTAIN COMMISSION REVISIONS

[Cancellation Date - Effective Until Canceled]

(1) Retroactivity of Guideline Revisions

(a) Retroactivity for guideline revisions is authorized where the guideline range calculated under the revised guidelines is more favorable to the prisoner than the previously calculated guideline range. That is, retroactivity is to be determined by whether the guideline range is more favorable when calculated, de novo, under current procedures. This retroactivity determination will be made at all subsequent hearings (e.g., statutory interim hearings), appeals, pre-release record reviews and/or whenever the matter is brought to the attention of the Commission.

(b) Statutory Interim Hearings: (1) If the revised guideline range is more favorable, complete reasons will be given beginning with the statement -- "Your guidelines are recalculated as follows:". (2) If the revised guideline range is not more favorable, complete reasons need not be given, but the Notice should state: "Retroactivity does not apply."

Note: If the previous date is advanced or retarded for other reasons (e.g., superior program achievement or disciplinary infractions) amend the above wording as appropriate.

(c) Pre-release reviews. Advancement of the parole date will be considered, but revised reasons need not be provided to the prisoner.

(d) Termination of Jurisdiction. The probation service will use the salient factor score calculated by the U.S. Parole Commission. The post-release analyst should calculate whether the revised score would place the parolee in the 'very good' category, and if so, apply the revised score.

(2) Retroactive Application of Parsimony. At a statutory interim hearing or a pre-release record review, a case may be advanced to correct an unwarranted

departure from the principle of parsimony at a previous decision. This may be cited on the Notice of Action as 'retroactive application of parsimony'.

(3) Dispositional Revocation Procedure. The revision to 28 C.F.R. §2.47 (effective 10/1/84) is prospective only and applies to cases given dispositional record reviews on or after 10/1/84. Cases for which dispositional revocation hearings were ordered under previous procedure will be heard as previously ordered.

(4) Fifteen-Year Reconsideration Procedure. Cases previously scheduled for ten-year reconsideration hearings will be given reconsideration hearings at the time of the next scheduled statutory interim hearing. Following such hearing, a presumptive release date may be set up to fifteen years from such hearing or a fifteen-year reconsideration hearing may be ordered.

B. SPECIAL PROCEDURE FOR PRELIMINARY INTERVIEWS: WESTERN DISTRICT OF WASHINGTON CASES [Cancellation Date: Effective Until Canceled]

In order to comply with a decision by the United States District Court for the Western District of Washington, U.S. Probation Officers who conduct preliminary interviews in that district make the actual finding rather than a recommended finding whether or not there is probable cause to believe that the parolee violated a condition of his parole. If the Probation Officer finds no probable cause, he is to contact the Regional Office by telephone immediately, so that the Regional Commissioner may, if appropriate, reverse that finding before the parolee is released.

In all other respects, preliminary interviews in this district are conducted in accordance with standard procedures, including the use of the summary report of the preliminary interview and the Commission's probable cause letter.

C. SPECIAL PROCEDURE FOR RESCISSION CONSIDERATIONS: SECOND CIRCUIT CASES [Cancellation Date: Effective Until Canceled]

The following procedures are presently being used to comply with a decision involving parole rescission in the Second Judicial Circuit (New York, Vermont, and Connecticut). Drayton v. McCall, 584 F.2d 1208 (1978).

(1) Outside of Connecticut. This section applies to all (effective parole date) rescission hearings conducted in the States of New York and Vermont.

(a) The scope of the rescission hearing is a de novo determination whether the parole grantee violated institutional rules or committed a new crime and, if so, whether parole should be rescinded as a sanction. Findings of a rule violation by an Institutional Disciplinary Committee may be considered as evidence of the charged disciplinary infraction, but such findings are not taken by the Commission as conclusive of the matter. The parole grantee is given an opportunity to show that the IDC erred in its findings or that his conduct does not justify the rescission of the parole already granted. A new criminal conviction, however, is accepted as a conclusive determination of guilt.

(b) A statement giving notice of procedural rights (Attachment 1) is attached to the prisoner's copy of the Notice of Action reopening the case for a rescission hearing.

(c) Disclosure of documents is provided under the same procedures as for rescission hearings outside the Second Circuit.

(d) The prisoner is given the opportunity for confrontation and cross-examination of adverse witnesses. Requests for adverse witnesses should be received in the Regional Office within twenty days of the date of the Notice of Action reopening the case for a rescission hearing. Such requests are referred to a case analyst, who will recommend to the Commissioner whether to grant or deny them. In making that determination, reference should be made to the standards for deciding whether adverse witnesses are warranted at local revocation hearings. Such witnesses should be persons who have provided information supporting the charges. Ordinarily, such witnesses should be present at the hearing unless the Commission finds good cause for their non-appearance. Good cause may include irrelevancy, repetitiousness, or undue hazard to institutional security (the Bureau of Prisons should be contacted for information relating to this possible determination). In addition, the fact that a possible adverse witness is a great distance from the place of the hearing may be good cause for non-appearance. In these cases, alternative means of presenting the information at the hearing should be used (e.g., affidavits, letters, etc.).

If an adverse witness is not produced at the hearing, the reason should be stated in the hearing summary. If time permits, a case analyst should send the prisoner a letter before the hearing stating whether the request for witnesses is granted or denied and, if denied, the reasons therefor.

NOTE: The fact that a request for adverse witnesses is untimely is not reason in itself to deny the request. If the untimely request is otherwise proper and time does not permit arrangements to be made for the witnesses to attend the hearing, the examiner panel should continue the hearing to the next docket unless the prisoner waives his right to confrontation and cross-examination of the witnesses.

(e) The prisoner may be represented by an attorney or another representative. The attorney may be hired by the prisoner; or, if the prisoner is financially unable to retain counsel, he may apply for a court-appointed attorney on Form CJA-22 (available from the case manager). The role of an attorney or other representative at these hearings is the same as in a parole revocation hearing.

(f) The following forms used for revocation hearings are used for these rescission hearings, with the word "revocation" replaced by the word "rescission": revocation checklist, attorney witness election form, Form CJA-22. Additionally, the section of the revocation hearing checklist relating to receipt of a copy of the warrant application should instead read that the prisoner has received a copy of the Notice of Action listing the charges.

(2) Connecticut. Because of an injunction issued in Green v. McCall, Civil No. N-78-23 (February 9, 1978), the procedures described above are applied in rescission hearings in Connecticut with the following variations:

(a) The procedures apply to rescission of presumptive as well as effective parole dates.

(b) Instead of the notice of procedural rights given in New York and Vermont, prisoners in Connecticut are sent a special form letter relating to the Green case. (Attachment 2).

ATTACHMENT 1

The purpose of the rescission hearing is to decide whether a deferral of your parole date is warranted based upon the charges listed on the attached Notice of Action. At your hearing, you may present documentary evidence and you may call voluntary witnesses on your behalf. If you wish to contest the charges stated on the Notice of Action, you may request the presence of those persons who have given information upon which the charges are based. Such requests must be sent directly to the Commission within twenty days of the date of the notice. These witnesses will be provided unless good cause is found for their non-appearance. You may request your case manager to permit you to review all disclosable documents that will be considered by the Commission.

You may be represented by an attorney or other representative of your choice. If you are unable to pay for counsel, an attorney may be provided by the U.S. District Court if you complete and promptly return a Form CJA-22 to your case manager.

ATTACHMENT 2

U. S. Department of Justice United States Parole Commission

The Parole Commission has been required by court order dated February 9, 1978, by Judge Daly to send you a copy of a letter annexed to the record in the case of Green vs. McCall. This letter sets forth your rights as per the court's order at your forthcoming parole rescission hearing. The following is a copy of this letter:

Two individuals who had been incarcerated at the Federal Correctional Institution at Danbury, Connecticut, have brought a class action in federal district court on behalf of all federal inmates incarcerated in the District of Connecticut who have had or who will have parole rescission hearings. A major issue in the lawsuit is what rights must be given inmates at rescission hearings.

By order of the Honorable T.F.G. Daly, Federal District Judge, the United States Parole Commission cannot hold parole rescission hearings for any member of the plaintiff class until he has had the opportunity to confer with counsel. Further, at that hearing, a member of the class will have an opportunity to present documentary evidence and witnesses. A class member may also be entitled to the assistance of counsel.

If you are an inmate serving a federal sentence within the District of Connecticut and have been given a parole grant, but at some time prior to your release, your parole grant has been retarded so that the United States Parole Commission may reconsider that grant, you are automatically a member of the plaintiff class. Therefore, you are eligible to have the rights described above (e) and you will benefit from any final favorable judgment or be bound by any final unfavorable judgment in this action unless you take the steps set forth below to exclude yourself from this class. Any inmate who does exclude himself will be entitled, as a matter of law, to raise in a separate lawsuit the issue of what rights should be given at parole rescission hearings. However, as a practical matter, the judgment in the class action will probably dictate the outcome in similar suits.

If you wish to exclude yourself from the class action described above, you must give notice of your decision addressed to:

(1) United States Parole Commission, Northeast Regional Office, Customs House, 2nd & Chestnut - 7th Floor, Philadelphia, Pennsylvania 19106;

(2) Judith Resnik, Esquire, Attorney for the Plaintiff Case, 127 Wall Street, New Haven, Connecticut 06520.

If you exclude yourself from the plaintiff class, the Parole Commission may be permitted to hold a rescission hearing for you without giving you the protections described above and may hold that hearing sooner than it is allowed to hold hearings for members of the plaintiff class.

If you wish to remain a member of the plaintiff class, you need not do any thing. However, if you have any questions concerning this case, you may write to plaintiff's attorney, Judith Resnik, at the above address.

Sincerely,

____
Regional Administrator

cc: (1) Judith Resnik, Esquire, 127 Wall Street, New Haven, CT. 06520; (Enclosure);
(2) Case Manager, Federal Correctional Institution, Danbury, CT. 06810.

D. **SPECIAL CURFEW PAROLE PROGRAM** [Cancellation Date: Effective Until Canceled]

(1) Parole supervision with a special curfew parole condition is an experimental program to provide a substitute for Community Treatment Center residence for the 60 day period preceding the otherwise scheduled parole, mandatory release, or two-thirds date. This program (a joint Bureau of Prisons, Probation Service, Parole Commission effort) is designed for prisoners who would otherwise qualify for Community Treatment Center residence during this period but who have acceptable release plans and do not require the support services provided by the Community Treatment Center. Prisoners may be released to this program after completion of a period in a Community Treatment Center, or may be released directly from prison to this program (e.g., where Community Treatment Center residence is not available).

(2) To be considered for this program, the prisoner (A) must apply for this program on a form provided for this purpose, (B) must have been heard by the Commission and have received a decision, (C) have an acceptable release plan, and (D) be deemed by the Bureau as qualified for Community Treatment Center residence (under Bureau standards) but not requiring further Community Treatment Center support services. If the prisoner applying was previously continued to expiration, the new parole date with a Special Curfew Parole Condition must be within or above the guidelines.

(3) A prisoner may apply for this program by completing the following form:

APPLICATION FOR SPECIAL CURFEW PAROLE PROGRAM

I, __________________, ____________, hereby apply for the
Name Number

Special Curfew Parole Program. I understand that if I am accepted into this program, I will be granted parole on a date 60 days earlier than my current parole, mandatory, or two-thirds release date. I agree that, during the first 60 days of parole, I will remain at my place of residence between the hours of 9:00 p.m. and 6:00 a.m. each night unless I am given permission in advance by my Probation Officer to be elsewhere. I also agree to maintain a telephone without a call forwarding device at my place of residence for this period. If there are fewer than 60 days remaining between my date of release to parole under this program and my otherwise scheduled release date, I understand that the period of the Special Curfew Parole Condition will be reduced accordingly.

I have read and understand the above provisions of the Special Curfew Parole Program, and I waive any objection to those provisions.

____________________________, ________________________
Signature Date

(4) Upon approval of the application by the Bureau and the completion of the release plan investigation by the Probation Service, the Bureau will forward its referral with an up to date progress report to the Commission in advance of the current parole, mandatory release or two-thirds date using the following format:

Subject: Special Curfew Parole Program

__________________________, ________________________
Name Register No.

(1) The above named subject has applied and is deemed qualified for the Special Curfew Parcle Program.

(2) The subject's release plan has been recommended for approval by ____________________, U.S. Probation Officer (memorandum of ____________) (give specifics).

(3) Advancement of the currently applicable parole, mandatory or two-thirds release date of ________________ by _____ days to a parole on __________ is recommended.

(4) Notice of Action and Parole Certificate are to be sent to ______________________.

(5) Authority to approve or disapprove placement in this program is granted to the Regional Commissioner. As cases will have been screened by the Bureau of Prisons and a release plan will have been recommended for approval by the Probation Service, acceptance by the Commission is generally presumed. Upon approval of the Bureau's referral, the Commission will advance the release date by 60 days (or whatever lesser time remains) and process the case in an expedited manner.

The Order will state:

(a) If the prisoner currently has a parole date:
Reopen; advance parole [____] days; parole effective [__date__] with Special Curfew Parole Condition pursuant to 28 C.F.R. §2.28(e).

(b) If the prisoner currently has a mandatory or two-thirds release date:
Reopen; advance continuance to expiration [____] days; parole effective [__date__] with Special Curfew Parole Condition pursuant to 28 C.F.R. §2.28(e).

The Notice of Action will state:

(a) If the prisoner currently has a parole date:
Decision: Reopen; advance parole [____] days; parole effective [___date___] with Special Curfew Parole Condition pursuant to 28 C.F.R. §2.28(e).

(b) If the prisoner currently has a mandatory or two-thirds release date:
Decision: Reopen; advance [mandatory release] [two-thirds] date [____] days; parole effective [___date___] with Special Curfew Parole Condition pursuant to 28 C.F.R. §2.28(e).

Reasons: Special Curfew Parole Program.

Parole Certificate will include the Special Curfew Parole Condition for the number of days that the parole, mandatory release or two-thirds date has been advanced (up to a maximum of 60 days). A prisoner may be paroled under this program where less than 60 days remain until the otherwise scheduled release date. In such case, the period of the Special Curfew Parole Condition will be reduced accordingly. For example, a prisoner paroled 40 days prior to his otherwise scheduled release date would have the Special Curfew Parole Condition imposed for 40 days.

(6) The Special Curfew Parole Condition to be added pursuant to this program will state:

> During the first [____] days of parole [until ___(date)___], you will remain at your place of residence between the hours of 9:00 p.m. and 6:00 a.m. each night unless you are given permission in advance by your Probation Officer to be elsewhere. You will maintain a telephone without a call forwarding device at your place of residence for the above period.

(7) The Probation Service will be expected to provide high activity supervision for the period of the Special Curfew Parole Condition (including at least weekly contact with the parolee and monitoring of this special condition by random periodic telephonic contacts, which random telephonic contacts shall be made during the hours of the curfew restriction, shall commence within the first three days of the subject's release under this program, and shall thereafter be made not less than one time per week as long as the curfew condition is in effect). The U.S. Probation Officer supervising the case is to promptly report to the Commission any repeated or flagrant violation of this special condition. Failure to comply with this special condition may result in imposition of Community Treatment Center residence as a condition of parole, or revocation of parole and return to prison, as the circumstances warrant.

(8) The U.S. Probation Officer supervising the case is authorized to grant exceptions to the Special Curfew Parole Condition for good cause (e.g., to permit overtime work, or an evening for shopping) consistent with the response of the parolee to supervision.

- -

APPENDIX 7 - USE OF PAROLEES AND MANDATORY RELEASEES AS INFORMANTS

ITEM A: INFORMATION TO BE PROVIDED TO THE UNITED STATES PAROLE COMMISSION ON THE USE OF INFORMANTS

The following information is provided to aid agencies when preparing initial requests and subsequent status reports on releasees acting as informants:

1. The letter requesting the use of the releasee should be prepared for the signature of the Director of the agency requesting the use and addressed to the appropriate Regional Parole Commissioner through the Chief United States Probation Officer of the supervising district.

2. The letter should begin with an overview of the proposed utilization of the releasee, specifically stating the significance of intended target(s) in the case.

3. The letter should contain the agent (by name and telephone number) who will be working directly with the releasee.

4. The letter should contain the agency's operating instructions to the releasee and the administrative controls to be utilized.

5. The letter should contain an evaluation of the releasee's risk factor and the agency's plan to combat this risk.

6. The letter should contain a statement indicating why the potential benefit to the government outweighs the risk of the releasee's reinvolvement with criminal associates.

7. The letter should contain a statement concerning monies to be paid to the releasee for his services and/or expenses.

8. The letter should contain a statement concerning any travel that the informant might be required to make outside the supervising district.

9. The letter should contain a summary of any intended utilization of electronic equipment, surveillance equipment or wiring of the releasee.

[NOTE: All correspondence concerning Informants must be marked PERSONAL & CONFIDENTIAL and TO BE OPENED BY ADDRESSEE ONLY.]

ITEM B: LETTER OF AGREEMENT ON USE OF INFORMANTS

Address:

Date:
Re: Name:
Register Number:

Dear (Director of Agency):

I am in receipt of your request to have the above-named individual act as an informant for your agency. Before such approval is granted, all parties concerned must agree to the below-listed set of conditions.

1. The use of the releasee's services in the capacity of informant will be for a period of no longer than ninety (90) days.

2. A written report will be provided to the United States Parole Commissioner every thirty (30) days. A final report will also be prepared at the end of the authorized period. Copies of all reports will be sent to the appropriate United States Probation Office. The reports will include, among other things, any changes in the status of subject's participation, including payment for cooperation, use of wires, the agency's operating instructions to the releasee, the proposed administrative controls and proposed travel outside of the supervising

district that has not been previously approved. All foreign travel must be approved by the United States Parole Commission prior to the actual date of travel. Failure to submit said reports constitutes an immediate cancellation of authorization to use releasee as an informant.

3. [Except for the specific circumstances outlined in the requesting agency letter dated ____________], the releasee is not to participate in any illegal activity while engaged in an informant capacity. If any arrest occurs, the United States Parole Commission is to be notified immediately and no attempts are to be made by the agency to divert the prosecution of new charges.

4. The release is not to be used in any manner which might jeopardize his safety or cause him to violate any of the conditions of parole (a list of standard parole conditions is attached).

5. The releasee shall acknowledge that he understands these conditions and that he is signing this agreement willingly and is not being subjected to any threats or coercion.

A copy of this letter has been forwarded to the Chief United States Probation Officer responsible for the supervision of the releasee. An in-depth briefing with the releasee concerning his relationship with your agency, the intended target, your operating instructions to him and the conditions imposed by the United States Parole Commission will be conducted by the appropriate United States Probation Officer and a representative of your agency.

At the briefing, this agreement must be signed by the releasee, the appropriate United States Probation Officer, and your agency's Director, Regional Director or their designee acknowledging that all parties understand and accept the conditions as outlined.

As the operation proceeds, the assigned USPO is to be kept fully informed regarding the operation's progress insofar as it involves the releasee, and regarding your agency's expectations for releasee's future activity in the operation. This is essential in order to insure that an uninformed USPO does not inadvertently enter into a situation which might needlessly jeopardize the USPO's safety and/or the integrity of the operation.

At the conclusion of the agreement period authorized by the United States Parole Commission, the appropriate United States Probation Officer is to advise the releasee that his informant role has been terminated.

Once this office is in receipt of this signed agreement and all the necessary information is obtained, your request will be carefully reviewed. You will be notified of my decision as expeditiously as possible.

Sincerely,
Regional Commissioner

Encl: USPC Conditions of Release: 28 C.F.R. §2.40
USPC Rules & Procedures: 2.40-05

****

____
Parolee/Mandatory Releasee

____
Date

United States Probation Officer   Date

Agency Representative   Date

cc: Chief USPO

[NOTE: A copy of the CONDITIONS OF RELEASE as stated in 28 C.F.R. §2.40 should be attached to the LETTER OF AGREEMENT sent to the requesting agency.]

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